THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY Court of Common Pleas

Joseph M. Strickland

Master In Equity for Richland County

Case No. **2016-CP-001468**

RECEIVED
MAR 26 2018
SC Court of Appeals

South Carolina Community Bank,

Respondent,

V.

Carolina Procurement Institute, Inc., Gary A. Washington, Michele A. Washington, First Palmetto Savings Bank, F.S.B., Branch Banking and Trust Company of South Carolina, Palmetto Health Alliance, State of South Carolina Department of Revenue Of Whom Carolina Procurement Institute, Inc., Gary A. Washington, Michele A. Washington.

Appellants,

RICHLAND COUNTY
FILED
2018 MAR 26 AM 10:39
CLOCKED IN ERROR
JEANNETTE W. McBRIDE
C.C.P. & G.S.

REQUEST ATTORNEY WILLIAM PYATT BE RELIEVED AS APPELENT'S COUNSEL, RETURN OF FUNDS AND THE ATTACHED DOCUMENTATION OF FACTS TO INCLUDE TRANSCRIPTS OF FRAUD BY ATTORNEY WESTON NELSON, ATTORNEY CHARLES WEBB, ATTORNEY LINDA BARR AND SOUTH CAROLINA COMMUNITY BANK BE INTRODUCED INTO EVIDENCE UNDER JUDICIAL NOTICE WITHIN THIS APPEAL.

Appellant moves this honorable court to relieve William Pyatt as Counsel in our appeal case, that we be provided adequate time to seek new counsel specifically to request an audience before the court. Fraud and perjury upon the court amount to some of the most serious crimes and we request judicial notice. The very reason Judge Duncan and Judge Strickland failed to rule on the facts, mainly did the property have equity, is because they allowed the creditor to lie concerning material facts to the court and then profit from it, thus our appeal before you. One attorney, Attorney John Davis, has loss his law license by the South Carolina Supreme Court over this case and we believe this is pertinent to our case. Others will also lose their license but that does not remedy the fraud upon the court or the theft that have occurred from its perjury. Because Attorney Pyatt refused to submit this court information we move for him to be gone from our case and another take his place. We have been unable to come to an agreement on his representation of our case and we need to move forward in seeking new counsel to represent our interest. The return of funds of $2500.00 for the unearned amount paid for representation is our request. We ask for 90 days to seek counsel. The judicial notice request of fraud upon the court is contained within the document and its attachments that lay out the scheme that scammed us out of our property and Judge Strickland failed to unwind for the finding facts that reveal fraud upon the court. Again, this is a concerted effort by several attorneys to help the bank lie and steal. This is the Court's opportunity to clean house and we pray, we pray your reach and discretion are exercised. I certify that this designation contains no matter which is irrelevant to this appeal.

I certify that I have severed Richardson and Plowden Law Firm, Attorney William Pyatt and the South Carolina Supreme Court Disciplinary Counsel the identical document.

Gary Washington March 26, 2018 Attachment 1

From:

Mr. Gary Washington, President
Carolina Procurement Institute, Inc.
2917 River Drive
Columbia, SC 29201

March 26, 2018

TO:

Office of Disciplinary Counsel
1015 Sumter Street, Suite G-08
Columbia, SC 29201

The Banking Commission
Robert L. Davis and Kathy L. Bickham
Commissioner of Banking and Assistant, respectfully
1205 Pendleton Street, Suite 305
Columbia, SC 29201

RECEIVED
MAR 26 2018
SC Court of Appeals

SC Attorney Office
Wells Fargo Building
1441 Main Street Suite 500
Columbia, SC 29201

Time Scott Republican-South Carolina
113 hart Senate office Building
Washington, DC 20510

FBI Headquarters
935 Pennsylvania Avenue, NW
Washington, DC 20535-0001

Subject: Submission to the Your Office for the ordering of an investigations into my (Gary Washington) dismissed case based on fraud against the Court by United States Trustee (UST) Linda Barr, South Carolina Community Bank and Richardson & Plowden Law Firm. Request an investigation of our complaint against Attorney Robert Cooper, Attorney Robert Pohl, Attorney Nelson Weston and Attorney Charles Webb for unethical conduct, white collar crime and Public Corruption.

We have recently found out that Attorney Leslie Coggiola is now retired from Office of Disciplinary Counsel. Yet her inactions to her previous duties have furthered our injury because of favoritism and abuse of power in her previous position. Thus we leave her name in this complaint as a key perpetrator that permitted unethical conduct to our injury.

We have a bank, South Carolina Community Bank that has certainly committed fraud against our company, Carolina Procurement Institute, Inc, my family and the Court. The fraud involves commercial property appraisal equity and Chapter 11 Bankruptcy cases. These cases are steeped in Public Corruption to steal property for the University of South Carolina and South Carolina Community Bank in order to build a parking garage. These cases studied in context seeps Public Corruption and must be considered together in order that the fraud and

Bankruptcy Court's vendetta are revealed. The property has over $250,000 of equity and University of South Carolina want to purchase it from the bank.

Thus far we have managed to get one attorney's law license suspended, Attorney John Davis, pending an investigation by the South Carolina Supreme Court Disciplinary Counsel. We have exposed a premise of incorrectness, unfairness and unlawful behavior as a contrived abuse of authority to use the court to exercise criminal behavior by attorneys. Fraud is a criminal offense no matter who commits it!

The unethical conduct of Leslie Coggiola was consistently damaging. She has demonstrated subjective decision making instead of objective decision making based on the facts of our complaint packages submitted against United States Trustee Linda Barr. Basically, the United States Trustee, Linda Barr, ignored our civil rights as did Leslie Coggiola while exercising a vendetta against us and assisting in fraud against the Court in order to dismiss our Chapter 11 case before Judge David Duncan. Judge Duncan, too, is part of the problem in getting a fair ruling based upon the bankruptcy law as he has helped orchestrated these injustices with Linda Barr.

Notwithstanding Attorney Coggiola's loyalty and responsibility should have been to the law and not to her fellow attorneys. The UST cannot be absolved from the statutory duty to make the referral of fraud (criminal referral) by the creditor to the South Carolina Attorney Office for investigation and prosecution. Although Linda Barr, an attorney, practices law she is not above it and must be held liable for her actions. For that matter neither should Judge Duncan.

Linda Barr and Judge Duncan are aware of this duty as they threatened to abuse this authority against me during their attempt to rehabilitate John Davis. Transcripts are available of the disgorgement of Davis that demonstrates their adversarial behavior toward debtor for challenging the unethical conduct of Davis. This all goes to their bias and unfitness to carry out the duties of their offices. Linda has become an attack dog against the debtor rather than a watch dog for the Court and the estate. Judge Duncan only finds the facts that justify his rulings and not the truth in the matter before him. It is not in his preview of wide discretion to permit fraud upon the Court or to permit the UST to assist in crime.

These fraud cases have cost $8.6 million in damages to us and our companies as we had federal government, state, and local contracts in logistics throughout this state and could have had more. The frauds have ruined our business, Carolina Procurement Institute, Inc., recovery opportunities.

The bank that committed fraud is South Carolina Community Bank,. The Bank's Chairman is Paul Mitchell and their legal team Richardson & Plowden Law Firm of Columbia, SC, specifically attorneys Charles Webb and Nelson Weston.

The bank has offered $25,000 to us for settlement and to drop our complaint. Request these cases be opened to be exposed and examined/investigated by outside officials, expert in chapter 11 bankruptcies and fraud, with the authority to prosecute **all parties** involved.

It is PUBLIC CORRUPTION. Public corruption is rampant and the law firms that practice in this bankruptcy court are afraid of reprisal from Judge Duncan through Linda Barr to exercise the rights of their clients. It really has become a conflict of interest for the client and the law firm. The law firms protect their interest by letting the United States trustee walk on and over their client. There is no other explanation once preponderance of the evidence set forth here is evaluated.

"Maslow's theory" left out one element, maybe the most important, to the need of mankind. That is the need for justice ...a sense of fairness in matters that consist of an objective evaluation.

The bible states it as the "just shall live by faith". A conscious within the person that has been wronged that a reckoning will be satisfied in their matter by God's elect and faithful. Habakkuk 2: 4b. We have wounded the head out of the house of the wicked by discovering the foundation of untruth within this court. We need help in exposing the players and getting them gone.

To this end Attorney Robert Cooper, Attorney Robert Pohl, Attorney John Davis careers meant more than their client's rights. Thus fear of Barr's reprisals created a conflict of interest. Instead of dissolving their client attorney contract with CPI and making a motion to the court to withdraw as counsel (correct provision) they took our money some 80,000 dollars and served us up to the Trustee to protect their future business interest within the Bankruptcy court. Each of the these officers of the court had the single most powerful evidence to prove equity, which is the crust of this case for adequate protection, in their possession but would not subpoena the appraiser to have appraisal entered into evidence. WHY NOT? Pray and tell!

Both Attorney Charles Webb and Attorney Nelson Weston discovered the equity in the property because of the City of Columbia's blunder on a loan closing. They then determined together with South Carolina Community Bank to lie, deceive, steal and profit through the Bankrupcty Court. This was done under the guise of lawful lawyering. Orchestrated simultaneously was Judge Duncan's holding of the knowledge of great equity in the 1811 & 18 15 Gervais, Columbia, SC 29201 property by his own ruling in the forced confirmation chapter 11 the "first case". Moreover, Judge Duncan knowingly in the second case which was handled by Attorney John Davis should have cast aside the case because Davis was NOT a disinterested party and that he believed Davis was clearly not equipped to handle my case. Yet he decided to drive on, why? This fraud case cannot be process through normal appeal court as it has been stripped of the facts by the court and attorneys to ensure our demise. Thus the normal legal process will not reveal the scheme. Both cases must be taken into context to see the crimes that led us to reaching out to you for a just solution. These cases are not in the court any longer and justice have not be served.

Further, Judge Duncan believed that Attorney John Davis mislead the Court and he (Duncan) bypassed even the evaluating of other attorneys that supposedly helped Davis with my case, why? Rather Duncan propped up the case and denied the Motion to Reconsideration; he then lifted the automatic stay and dismissed the case for the Bank, why? Why with no finding of fact of the equity in property was the case dismissed because the United States Trustee had plans for the property. Judge Duncan simply disregarded the facts, justice and all other creditors' interest. That which was bypassed by the court could not be entered into an appeal case thus hidden from justice.

This was further promoted based on the chief thief, Linda Barr, withholding evidence of equity by knowingly permitting Richardson & Plowden law firm to perjure themselves in court. Her unwillingness to protect the estate, the law and the debtor from abuse of authority by the Judge and fraud by the Creditor places this entire case victim to manipulation of the law for personal gain an a vendetta by Duncan & Barr which cannot be overlooked. It must be unwound.

When the court system is ruled by private interest it is no longer a court. It is a political tool of power. Our property being returned and major damage claims paid is relative to a faithful start toward justice.

The suspension of all parties law license that is involved is warranted just as the Counsel through the South Carolina Supreme Court did to Attorney Davis. It is important to the process of justice. They should not be permitted to maintain everything as normal (court proceedings, income and the good reputation in order to scam others) while an investigation is conducted no matter how long it takes.

This complaint should coincide with an injunction and halt of any actions by the Court and Bank on the properties 1811 & 1815 Gervais Street, Columbia, S.C., 29201. Judge Strickland taking of the property and giving it to the bank without due process is worthy of his removal. Fragrant abuses of God given authority such as abuse of judgeship must be remedied by removal from position, as a first step.

If we had not pressed Attorney Leslie Coggiola, then the Director of the Office of Disciplinary Counsel, with five packages and two formal meetings against Attorney John Davis he would have never been appointed for investigation. He would be still stealing and lying to clients and dirtying good attorneys. The investigation was done by:

Lex A. Rogerson, Jr.
Attorney at Law
P.O. Box 365
Lexington, SC 29071
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Certified Specialist in Bankruptcy and Debtor-Creditor Law

". . . nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Since then Davis have been suspended of his law license and paid a few of our funds back. But this is in NO way just going to go away. It is a system of corruption within the Bankruptcy Court. It's a court within a court. We are still suffering mightily. The Judge is still sitting scoring over $100,000 a year and the bank is about to steal our property. How can this be happening over three years now? Leslie was a key factor, blocking justice. We have put this package together in good faith for serious eye professionals bent toward justice to set course and clean house.

The first step is TO QUESTION?

WHY have this Judge, Judge Duncan, found theses facts and yet not provided any finding of the fact of equity or for a new hearing? Judge Duncan determined that John Davis was a disinterested person in our case (1) has determinate him not to be equipped to handle our case (2) that he mislead the court (3) the Judge forfeited the UST responsibility to find out if the seven factors that the US Trustee need determine whether or not the services benefitted the estate were reasonable (4) that he (Judge Duncan) had no desire to publish an attack of the professional competence of a fellow attorney (5) made inference that (Judge Duncan) "anything else that might be involved" (6). Why did Davis get off by the court but we have been crushed, figurityly. **See Attachment A for ruling of disinterested person by Judge an Attachment A for the other 5 determinations against Davis outline by number in the Transcript of Application for Compensation dated September 16, 2015.**

These derelictions of duty and abuse of authority poisoned my case before the appeal court and to anyone taking a vague look and certainly to justice.

It also set the tone for what Cooper could or would do on our behalf since the Judge and UST already partnered with Davis right in the record. We have been ostracized and punished by just bringing to light his corruption. This provided no remedy for the slaughter and lies against the truth that have place us in this position. We have been greatly harmed. The courts will not help.

Clear evidence exists of the bank's lawyers put forth a lie that debtor failed to provide adequate protection, that there was no equity in property therefore collateral is jeopardized. This lie transcended the fact that plenty of equity is in the property. The Judge would not seek to evaluate the facts but he ran to the side of the bank in order lift the automatic stay. **Attachment A., Davis Law License suspended order and documents pertaining to unethical conduct, case 14-05589-DD.**

Any violation (fraud) of an automatic stay is subject to liability by the transgressor (Bank and Richardson & Plowden) to heavy penalties in which we will also request in our lawsuit.

This case of Davis should have been thrown out by the Judge when considering all these facts but the lies had to be protected in order to steal the property under "legal means".

The United States Trustee Linda Barr is heavily involved in this fraud case and was protected by the South Carolina Supreme Court Disciplinary Counsel, Leslie. Tina Hebert (Now removed) of the City of Columbia, business Division and Tamika Isaac of The City of Columbia City Council, Tom Felder (now removed) of the South Carolina Community Bank are also tied to this clear injustice as it relates to the grant funded loan by Department of Commerce.

Public Corruption is caught by revealing perversion of responsibility compared to lawful accountability.

Let's get started by the uncovering the trail. We filed a Chapter 11 case through Attorney Reid Smith and it was objected by UST Linda Barr for comingling and financial irresponsibility and the case was dismissed, Case 11-00625dd.

We submitted an appeal to that dismissal and Attorney Linda Barr, UST, along with Attorney Reid Smith hit the ceiling. They threatened me and wanted to know who helped me put the appeal together. I would not state their request and we went round and round for me to "withdraw the appeal immediately as I did not know what I was doing." I refused to withdraw the appeal. They then wanted to know what would it take for me to withdraw the appeal and I stated a confirmation. This is when the vendetta started. Because Tamika Isaac a member of Columbia City Council, was also my closing attorney in the loan granted by the Department of Commerce botched the closing documents on the loan. That court made that loan amount, $200,000 that was secured by the properties (1811 & 1815 Gervais Street) be deemed unsecured.

That made the property instead of $650,000 secured debt, which is $450,000 by South Carolina Community Bank and $200,000 by the City of Columbia only be $450,000 secured. I only owed 340,000 in total on property. There was no more a second mortgage. This fact established plenty of equity and adequate protection.

Not only did that Appeal get my case confirmed and 200,000 dollars of equity in the property Judge Duncan was forced to confirm my case in order that I withdraw my appeal. This revealed that he was (my main issue in the future) using a magistrate judge in a bankruptcy appeal, strictly forbidden. **See Attachment B, Appellants Pro-Se Bankruptcy Appeal. After this move by us the vendetta "was on" to get the property, crash the company and Gary!**

For that reason, I know I had equity in the property, Judge Duncan and Linda did too. We all knew that previous federal cases were most likely dismissed using magistrate judges. I fulfilled the terms and conditions of the confirmed case for two years. Almost every monthly the Monthly Operating Report was contested by Linda. She wanted and waited until she could render the property over to the bank as she initially did but was reversed by our Appeal.

Her actions and inactions undermined the facts to the Court that the property had plenty equity. She fostered and pushed forward her agenda to separate a highly required asset, commercial properties, from the debtor, us,in order to deny confirmation in Chapter 11 case that John Davis botched.

This amounts to obstruction of justice, fraud and conspiracy to commit fraud and to abuse her position as United States Trustee for the Bank. Her core purpose was to ensure both the creditor and debtor are complying with the rules of bankruptcy, she failed that responsibility. Attorney Robert Cooper has complained concerning Linda and she is out of control. She has mustered a type of fear among bankruptcy attorneys to either they comply with her plans or face future hardship for their company and their clients. The fact that she was aware of the equity in the property by the first case makes her liable for permitting the Bank to deceive the Court.

Greater evidence of her knowledge that the property had plenty equity and she permitted the bank to lie to the Court was made clear and concise by me through a certified letter return sender of the facts that the court was duped and we were defrauded. It was a formal request for her to investigate and correct the Court or seek the court to find the facts. **See Attachment C, Certified Letter to Trustee Linda Barr dated Feb 24, 2015 and the certified return sender delivery card, PS Form 3811, July 2013. Proof that Linda Barr well knew of equity in property is by the signed receipt.**

Attorney Davis, the Bank and Richardson & Plowden received a courtesy copy. But for sure Linda Barr got the letter. Linda Barr concealed equity from the court nor did she address it head on to the Bank.

A key factor in understanding the fraud that took place is to consider what the Bank, Linda, and the Judge all knew and when they knew during ***both*** Chapter 11 cases that plenty equity was in the property. Taking into context the property's equity compared to what the bank's own appraisal stated and the amount owned by the Debtor on property demonstrate a valuable piece of commercial property. This will show a huge amount of equity in property in which the bank lied to the court and is trying to steal unless stopped.

While Linda was well aware of the fraud of the bank she neither addressed the concern nor advised the court. Where she gets that authority should also be evaluated as she acts imprudent and with impunity. She acted independently apart from her responsibility, the law and withheld material evidence of equity for fraud by the Bank from the Court.

She wouldn't even address the issue. **Attachment D is an email dated Dec 15, 2015 9:41pm from Attorney Cooper** of Linda Barr not being neutral and fair ...always against the debtors. Now this is an officer of the court yet Leslie Coggiola refused to open an investigation to even examine our complaint. Mind you, we provided much evidence. It is clear that partiality was present.

She (Leslie) was also made aware of the Court being deceived by the Bank by another email from Cooper, **Attachment E. email dated Oct 15, 2016 by Attorney Robert Cooper, case 3:16-cv-00128-CMC.** Specifically this email addresses the complexity of chapter 11 cases, a specialized type of law practice which should have triggered Leslie to engage an expert instead of sending us a form letter that no action will be taken because of "no new evidence". This is a problem; the initial information has not been correctly treated.

We request an extensive investigation be conducted and thereafter a Federal Grand jury should be assembled. Why have Attorney Leslie M. Coggiola of the South Carolina Supreme Court Disciplinary Counsel (USDC) been permitted to blocked (stonewall) the explicit lying by Attorney Linda Barr, a United States Trustee. Moreover, the conspiracy exist with Richardson and Plowden Law Firm on behalf of South Carolina Community Bank to commit fraud upon the Bankruptcy Court and me the tax payer?

Specifically, why had she been able to permit the known market value of the City of Columbia's appraisal of over $150,000 equity in property at 1811 & 1815 Gervais Street, Columbia, SC 29201 that Linda Barr withheld from the court in order for a foreclosure to take place? The City of Columbia and South Carolina Community Bank partnered on the appraisal.

Attachment F, Appraisals by Mr. Crider and South Carolina Community Bank & City of Columbia that Linda had in hand, delivered to her (Linda's office) when I had no attorney before Cooper was retained and Duncan removed Davis. Linda never questioned the City of Columbia who along with the Bank had their appraisal created together nor would she inquire to Mr. Crider who was the appraiser I hired to conduct our appraisal on Davis' unethical conduct watch. These are facts that we, the debtors, were shanghaied by Linda and Leslie because of the "did not want to know the truth" so no positive action could come forth for the debtor. It is an impossible situation. Pay particular attention, please, to the email from South Carolina Community Bank dated March 6, 2014 because it states that the appraisal had to be performed with USPAP and federal regulations. They both accepted the appraisal by Kennedy, Watson, McKinney & Associates, Inc by virtue of payment for the appraisal.

Those regulations apply to fraud in which the Bank deceived the court while they had appraisal market value that substantiated equity in the property yet put forth in their **filing 1/21/15, 3pm, page 4 of 37 paragraph 12 in case 14-05589-dd** that no equity existed in order to terminate the automatic stay. **(Reference, Attachment A documents). Their appraisal was completed and provided them in April 2014. Linda had this information.**

It is also clear that the appraisal of the Bank and City of Columbia were for proper underwriting, loan classification and/or disposition of the asset. So they (City and Bank) asked for an appraisal, engaged an appraiser, paid $3,000 dollars for the appraisal, received their appraisal for the determination of the asset that was 450,000 dollars. Yet they lied to the court that no equity existed in property. To put forth a lie to the court that the property had no equity is fraud! Fraud is a criminal offence. Mr. Walter Taylor, Vice President of South Carolina Community Bank was also in on this fraud.

If we (debtor) had any inquiry for misconduct while in bankruptcy Linda would have done back flips to investigate. The one-sidedness is glaring for answers. The Judge's motive was reciprocal of reprisal to us so Linda marched on. Her inactions merit her removal at once.

Our main question is why Linda did nothing and why Cooper even after having a bite at the apple did the identical thing as Davis (fail to subpoena the appraiser) to prove equity in property. Why did the Judge (finder of the facts) elude making this finding if the property no had equity? We contend it is because of the vendetta that he wanted to pass our property on for University of South Carolina through a sale. The Rules for Lawyer disciplinary enforcement permit the investigative panel review our complaint. We need this to occur.

This property sits adjacent to University of South Carolina on a major artery downtown in the City of Columbia, SC. Other important structures on Gervais are the State House, Capital of South Carolina, the SC Supreme Court, Ed Adventure, State Procurement office. This is a choice piece of real estate. These two cases are not in the court. Therefore, they are authorized for your immediate involvement by any agency you choose in order to get justice. Our complaint need a formal all out investigation. The two cases are linked and must be considered together in order to understand the clear pattern of public corruption.

The fraud has taken place and our damages are not nearly done. There is no explanation as to why this complaint is not addressed, except cover-up! If this had of happened to Leslie or Linda they each would want an investigation based on facts. By virtue of Davis having his law license revoked it is evident that he alone could not have the identical situation happen as "a repeat" on us. This thing was orchestrated and he may be your best person to provide his license back or a measure of it for turning state evidence. These cases must be unwound as other people and businesses are being hurt as I type this document.

The appearance of impropriety is clear. Who guards the guardians of justice? When Linda withheld the facts that the property had substantiate equity she alone greatly helpeed to remove the Court's "want to" to keep the automatic stay in place which was the core protection of the chapter 11 bankruptcy to reorganize. Moreover, she could have prevented the automatic stay from being lifted. She failed us.

Yet, she did not fail to run into court and defend the Attorney John Davis that wrecked our case. **See attachment G, Linda Barr testimony of trying to substantiate what she knew as false before the court within the disgorgement transcript of attorney fees.** Not only did she try and help him recoup fees charged us while providing unethical conduct. She also attempted to rehabilitate the $306,000 figure that she **well knew** was not the market value of the property in order to stop the judge from tossing that entire case and initiating a new one. She helped the lawyer who injured the debtor for the bank and judge.

Instead of bringing the letter forward that she had (**Attachment C)** she became derelict to her duty and intentionally harmed us. Linda had the first case to demonstrate that the property had equity; she had a certified letter stating that the property had equity, she had two appraisals stating the market value of the property and she had the schedules of both cases to know that a large amount of equity was in the property. She had both appraisals hand carried to her office by me. We have sent six complaint packages to Supreme Court Disciplinary Court with attached evidence of Linda Barr's knowledge of fraud upon the court and her attempt to rehabilitate, now suspended Attorney John Davis, for misrepresentation of equity in properties and unethical conduct. Still no investigation, why?

If she (Leslie) were unbiased it is clear from the information that we have already brought forward she would have had at least acted as Attorney Ericka Williams did and outsourced our complaint to an expert in the Chapter 11 Bankruptcy. **See attachment H, Letter of appointment to assign my complaint against Davis to an expert in the field.**

Attachment I, is the clear picture of the fraud upon the Court and us, Motion for Reconsideration. This document lay out the plain fraud of the case and had Attorney Cooper brought forth the appraiser we would still have our business and property. Also see **Attachment J of Attorney Robert Pohl's Motion**, almost identical to Robert Cooper's concerning (misrepresentation) fraud by the bank to the Court. Why would he not bring forth Mr. Crider, the appraiser, to substantiate equity in property and dispute the bank's claim?

Having brought that fact of the fraud and conspiracy of Linda to light it must be also brought to light why the identical failure of validation of our property by the appraiser who conducted the appraisal did Attorney Robert Cooper refused our instruction to have the appraiser testify of the property market value as it would have substantiated equity? Why did he fail to comply just like Davis? **See attachment K, Email Requesting Attorney Cooper bring forth the appraiser, Mr. Crider, to establish 557 Market Value and his refusal response.**

We believe the answer is fear of reprisal on himself from the Judge and Linda Barr. That question needs to be posed to him under oath. Robert Cooper both told me verbally and by emailed that he asked them to rescue themselves and they refused, see **Attachment L, His email dated 4/06/16 to me.** This is public corruption with no "body of authority" to rain them in. If no separate investigation is opened then there is no opportunity or potential for justice, and then it will be just us. We have suffered far too long in this matter. This is like a whistle plowing case. Yet reprisal is all we have gotten except for the stone walling. No attorney wants to take the case the judge have slammed the door on justice and we are the ones standing in truth. So we say the fear of reprisal is real and very valid.

By me, (debtor) having $577,000 market value and owing only $340,000 it is crystal clear that the first hurdle of confirmation was fulfilled. By reviewing our (Carolina Procurement Institute, Inc.) 2016 taxes with $365,000 income and paying over $150,000 in lawyer fees for our battle for this property, it's NO doubt that we could have made the monthly United States Trustee payments in a confirmed Chapter 11 case.

The reason Attorney Cooper after all his bragging of how good he is and respected failed to bring in the appraiser, Mr. Crider, to get the appraisal in the record so that the Judge would have to consider it is because he was and is afraid of Linda Barr and Judge Ducnan. He had time to get appraiser as I requested, yet he failed just like Davis. Either they were for us or for themselves? The questions should be asked and answered. Any seasoned Chapter 11 bankruptcy attorney will tell you that the first stage of confirmation is adequate protection for the Creditor or equity. Most cases that provide for equity and have incoming revenue get confirmed, why not mine?

Having John Davis suspended from practicing law in South Carolina and all his cases taken over DOES NOT right the injustices we have had an are suffering.

The facts alone demonstrate Leslie have blocked a valid complaint request for an investigation.

It's like these attorneys have circled the wagons to protect this thieving bank, South Carolina Community Bank, and for what purpose? It's certainly **not** justice. No wonder Justice Toal bit the head off of the Disciplinary counsel office. Something must be done in order to restore faith in this office.

The Bank, South Carolina Corrupt Community Bank, took the property to foreclosure and the Master of Equity, Judge Strickland, gave the property to the bank without going by the prescribed rules of the Court. The system did not fail us; the corrupt personnel that run the system are where our complaint and contempt rest. Linda Barr should be removed at once from the UST position and law license suspended.

Attorney Leslie Coggiola would not enable an investigation in order to corroborate the facts which go to her corruption that have undermined her position and responsibility to the South Carolina Supreme Court and us. Crimes have been committed and need investigating. She has not been honest in her dealings while living by the rule of covering for attorneys. This is public corruption and what we need now is leadership to break this cycle, remove the bad actors and their law licenses.

This document and its attachments are another effort at justice. It is a protest by our renewed complaint because the bank has schemed to take our property away based upon their willful use of a fraudulent valuation submitted to the court that values our property at one-half its Fair Market Value. This in furtherance of their elaborate scheme and effort to flip the property to new owners for twice the price in an effort to improve the banks abysmal balance sheet by order of their regulator, the FDIC.

Judge Duncan have failed to be the finder of the facts. He has placed another layer of injustice on top of what is already a white collar crime of public corruption. Again, this demonstrates the foul mark of City Councilwoman Tamika Devine Isaac with conflict of interest, yet nothing done. It is Politicians covering for each other and crushing justice. **See attachment M, City of Columbia Minutes of Meeting** whereas our debt on loan was confirmed to City Counsel as unsecured because of Isaac's error. This substantiated the bank's move to defraud the Court after they discovered that the City's loan to us was unsecured in turn that meant the property had a great deal of equity.

The shattering of public confidence in this Supreme Court Disciplinary Counsel is complete and leadership must be changed out immediately. Linda, her Boss and the Bank's attorneys, specifically Attorney Charles Webb and Attorney Nelson Weston deceived the Court. They should have their license removed and brought up on charges. They have a pattern of teaming together to lie and steal from through the court system.

An abuse of power was executed to exclude the evidence of equity at each turn to cover deception. The deception by Linda Barr to the Court was for the bank to get the property and sell it to University of South Carolina because it's in the footprint that the President of the University South Carolina have in their Master Plan. **See attachment N, State Paper of USC College Town.**

We have written him a letter and requested that they do not make purchase of the property located at 1811 & 1815 Gervais Street. We are one of only two black owners of commercial property in the USC location. The are Palmetto Fish and Gervais Professional Suites, (us) to our knowledge. The other two are churches, First Nazareth Church and Wesley AME Church. We have no intention of selling or permitting a theft such as South Carolina Community bank is trying to pull off for USC.

The bank's scheme is a fraud upon the court and the community. If allowed to go unchecked, it will result in losing hundreds of jobs that affect the lives of hundreds of Carolina Procurement Institute, Inc. future employees, their families and it will have a devastating ripple effect to thousands throughout our community.

The bank's mismanagement and penchant for fraud and deceit is well documented in articles in The Post and Courier written by Noelle Phillips and others, and their role as the City's trustee in connection with the disappearance of the hundreds-of-thousands-of dollars in CRLF money must be questioned.

Exposure and light to the office of United States Trustee and the South Carolina Supreme Court Disciplinary Counsel as to how and why it has continued to rubber stamp our complaint as "nothing" need to shine and come on.

This case has not been about justice it is about power to steal land like Jezebel on Naboth's land, 1 Kings 21. This is no mistake. If we did not have the finances and wherewith all to stay the course this corrupt bank would have already stolen and sold the property. It was intentional acts of Linda Barr to protect illegal activity specifically fraud upon the Court in order to assist the stealing of our commercial property by the bank to sell it to University of South Carolina.

It is sad that we must do her job (Leslie's) but here are some questions that require answers: The answers will prove that Linda Barr well knew of the equity in property and yet permitted and fortify the Bank's attorneys that are her friends to commit fraud upon the Bankruptcy Court.

This fraud effectively sabotaged the efforts for plan confirmation. Her exclusion of the facts, that she had in hand but would not disclose to the court, permitted the Judge to lift automatic stay based on the Bank's request for him to do so. This placed the property in foreclosure mode and gave Master of Equity authority to give property to bank. Mind you, this was a concerted effort by the UST, an Officer of the Court, the Judge and my attorneys doing nothing to stand in their way because of a vendetta from the first case. All they had to do was follow instruction to subpoena the appraiser, Mr. Crider, which would prove his appraisal of $557,000 on the record. This is pretty much how John Davis failed in doing his job?

That leads to the question of "why"? Attorney Davis, Attorney Cooper and Attorney Pohl were afraid to use subpoena power in order to bring the appraiser to court, Mr. Crider the appraiser author, to prove that a large amount of equity existed within property, well over $200,000 in the second case? Adequate protection has been fulfilled that is the very reason the settle agreement was the remedy. The lie was forged when they realized they were sitting on over 90,000 dollars of our new up fits to the facilities and that the second mortgage was eliminated which equaled 290,000 dollars nearly double of what we owed. They immediately went to work on scheming to steal the property. They got sloppy, lied and intimated attorneys then used the master of equity to kick us out of the facility and give it over. This greedy and cruel theft of our equity should not stand. With the facts presented here it should muster a righteous indignation to get justice and uphold the law. They stole our livelihood and many others as well.

The South Carolina Banking Commission should have referred these cases to the proper authority for investigation yet they have failed to do anything. What is going on with our leadership and money?

They each (Cooper, Davis, Pohl, Hawkins) had my expressed request to bring in the Appraiser, Mr. Crider, by subpoena but their extreme fear of what the UST would do to them, their law firms and their future clients based on them going "hard" against the UST plans for our property prevented that to take place.

There is no other explanation. It came down to self preservation. I'm one case yet they face Linda every day as part of their obligation to their profession. We never had a chance and that is why I come to you with compelling evidence and the expectation for you to provide a measure of justice based on your authority. The UST derived her authority from somewhere to act against her prescribed duties. That is clear. **Retaliation on these attorneys for fighting for justice is what this case amounts too.**

Questions needing Answers:

What was the initial relation between Carolina Procurement Institute, Inc. (CPI) with bank, SCCB in terms of contract loan?

What were the two loans secured by and when did the Bank's attorneys find out that the City of Columbia loan was unsecured?

How much was each loan from the bank and the loan from the City of Columbia?

Who was paid for each loan and how much, the terms?

Where did the City of Columbia get the funds to loan? Was the agency that gave funds to City of Columbia made aware of the loss of over $200,000 by Attorney Tamika Isaac's incompetence? Or, that the City of Columbia City Council let the funds be lost because of their relationship with Tamika Isaac and not pursue reimbursement or charges against her law firm insurance?

What evidence suggests they knew and did nothing to recover funds from the closing attorney? Who permitted Tamika Issac Devine to be a closing attorney on City of Columbia's loans while she sat on City council…conflict of interest to the core? How much money did she make playing dual roles? What amount of money was total loan for South Carolina Community Bank compared to their, in hand, appraisal of the property when the second case got dismissed by Judge Duncan? What was Walter Taylor roll in the appraisal?

Who gave Walter Taylor authority to engage appraisal firm?

The confirmed bankruptcy case (Chapter 11, Case No: 11-00625-dd) was handled by which United States Trustee? What Judge handled this case? Was that case dismissed and how/why did it get confirmed? Could that that action of having Judge Duncan being forced to confirm our case that his misconduct would stay sealed on other cases that he performed the same manner of using a magistrate judge to dismiss cases. Did the confirmation make the magistrate issue go away for Duncan? How many other cases did Judge Duncan us a magistrate judge to sign off and dismiss cases?

How many other cases fall into this category of what has happened to us? Could my catching of the misconduct have started the vendetta?

What cause would negate Pohl, Cooper and Davis from exercising our requirement to subpoena the appraiser besides fear of reprisal from the court and ust?

What was the core issue of the property being authorized for lifting of the automatic stay?

How many days was it between the dismissal of the first case that Reid Smith was chapter 11 attorney and the days of its confirmation? Who made this occur; what persons? What plausible explanation makes sense based on preponderance of the evidence?

What changed from CPI being unworthy to be confirmed to all of a sudden case approval equaling confirmation? Was it the withdrawal of pro se appeal of Gary Washington and why? How much time elapsed between the dismissal and confirmation of our chapter 11 case? Was this some type of speed record of reversal?

What was the secured loan amount on 1811 & 1815 Gervais Street property at confirmed case in each case? What was the debt amount owned by CPI to the bank at the time of dismissal?

How much secured debt based on each of the loans provided CPI was left at the close of the confirmed case as far as the bank's attorneys were aware? Who nullified the City of Columbia's loan as secured debt and why?

Did the confirmed plan reflect the loan monthly payment based on the single loan amount owed the bank? How much was that and what was the loan terms based on the dismissed case?

Could it be that when the bank's attorneys calculated the amount we were to pay on 340k verses 540k same as their appraisal that they discovered that the second mortgage no longer existed?

Why was the property 18 11 & 1815 Gervais Property stripped from being permitted to be included with the confirmed Chapter 13 case by Attorney Eddye lane based on equitable interest and automatic stay? Who stopped that and why**? See attachment N-1 Attorney Eddye Lane for automatic stay of inclusion of 1811 & 1815 Gervais Street Property**

How much was the loan payment for the property for the Bank's settlement monthly payment in comparison to the United States Trustee's monthly payment would have confirmation?

When did the Linda know the amount owed on property and the difference that amount was unsecured being owed to the City based on her records? In others words, did the bank have adequate protection in order for the Judge to confirm the case going into the second case and why? Why did Duncan not find the market value of the property in light of him disgorging Davis and saying that Davis did not know what he was doing? Same question for Barr?

Did United States Trustee fail to alert Court that the banks stated amount owned to bank was much less that the market value of the property based on her records (court orders, modification, schedules, etc)? Did she have a duty to alert the bank?

Did United States Trustee failed to alert court that the market value stated by bank was erroneous? Did the United States Trustee alert the South Carolina Attorney Office of fraud suspicion based on her facts concerning bank? Did Linda Barr, UST, have a duty to report fraud as it relates to the Estate protection in bankruptcy?

Did United States Trustee fail to alert Court that the bank had appraisals of market value much higher than what was stated by the bank thereby exposing their fraud to deceive the Court?

Did debtor alert United States Trustee of error in market value? What is the evidence of that fact? Why did the United States Trustee refused to investigate or at least bring to light the fact of equity in property to the court?

Did United States Trustee alert the Court of known erroneous information put forth as facts by the bank were criminal activity?

Did United States Trustee alert the Department of Justice of suspected criminality of deception by them not disclosing market value of property to the Court? Did she have a responsibility to do so? What was United States Trustee purpose in rehabilitating Davis as it pertains to the equity when she had facts on the contrary of what Davis testified to the court as to the actual market value of 1811 & 1815 Gervais Property?

Was United States Trustee aware of actual equity in property when she testified in the disgorgement hearing of Attorney John Davis?Why did she, having knowledge of equity and correct market value of property, hurl to the court the continued lie of John Davis? Was she aware that Davis had tried to get the market value corrected but failed to bring in appraiser? When would she have been made of Davis attempt to correct the record from 306,000 to 557,000? Could the purpose be to help secure property for Bank and or follow the Judge's direction to execute the vendetta?

Should the Disciplinary Counsel engage a forensic investigator firm in ecommerce to search emails to determine who knew what and when? Records discovery would solve much of why the courts never bothered to determine equity? Seldom is fraud on the front cover of a matter. It usually lies between the parties in forms of communications or actions contrary to good faith.

What was the purpose of her deceiving the Judge of the market value of the property in the second case Chapter 11, Case No: 14-05589-DD while testifying on behalf of John Davis against his incompetence? Was it a debt to John Davis for her not vetting him as a properly practicing chapter 11 Bankruptcy attorney or to ensure that this case was not reversed and another case provided or both?

What was her role in vetting Davis in chapter 11 matters based on the Trustee Program? Attorneys must realize doing their job is the power in and of itself to protect their job security. Linda intentionally hurt us and Leslie protected her sin which is even worse.

What did the United States Trustee attempt to establish and confirm in the hearing of the Disgorgement of John Davis fees and for fee sanctions as it pertains to his failing in following our direction and proving our market value of property 1811 & 1815 Gervais Street properties? Why did she fail to question Davis as to why he refused to bring in the appraiser by subpoena or inform him of it being the only way to get the appraisal in the record for consideration? She seem to help him in all other ways why not that which would have been of value to our confirmation.

By Attorney Robert Cooper having the entire transcript **Attachment O, Reconsider Motion for Relief From Stay, dated December 29, 2015.** Why would he (Cooper) NOT verify the crust of this case that revolved around equity in the property specifically pages 15,16,17 as the judge denoted without the appraiser it (appraisal value) is the rankest of hearsay? Again, this goes to the unethical conduct of Attorney Cooper by refusing to have the appraiser present to testify. He well knew that this was the only way to get the appraisal in the record. Oftentimes an attorney will use several hearings to gain more billable hours off of their client. They can bill for travel, preparation time, meal and many times the hearing is a formality and not a full blown hearing. What did Cooper billing for that meeting that he was totaling unprepared for cost and what made him presume that the judge would grant more time based on the case past performance?

Either way, the fatal blow of proving equity was taken away from me at 65,000 dollars by Cooper. He constantly submitted motions that I requested he provide to me first in order that I proof and add or delete my case information.

When does it occur to the officer of the court, Lawyer that they are being paid to do a job of their clients? What is Cooper's explanation for not having Crider, the appraiser on the stand? Based on preponderance of evidence what is a reasonable assumption of what Cooper received from the Trustee and or the Bank's attorney's to cancel our opportunity at justice and permit them to steal the property?

It is another fact that if provided the schedules, which I requested, PRIOR to submission that I would have caught the major error that Cooper executed on my behalf which was to use the erroneous 306,000 as the market value of the property.

In reviewing Attorney Cooper's actions and inactions are proof of unethical conduct and incompetence. The judge made more of a fool of Cooper than Cooper did of Davis. Do the major deliberate errors that Cooper installed within our case mirror a professional Chapter 11 Bankruptcy attorney with 25 years of experience?

Yet we are the ones suffering from their decisive failures and unethical conduct. It was our case and he was paid in full to prosecute our directions yet he failed as well. This is also true with Linda Barr, the UST, as she well knew that 306,000 was not the correct market value as she had the appraisals yet she stepped up again to carry a known lie to the court of the market value. She perpetrated a fraud upon the court.

Here we have four attorneys and one judge, all officers of the court, either they are outright lying to the court, on the court or have provided substandard representation equaling unethical conduct. Cooper, Weston, Barr, Duncan, Webb and Pohl failed us. Robert Pohl took my money to represent me and then get in court and tell the judge he is there for just moral support. **See pages 5 and 6 of Attachment O.** What the hell, sorry. As we write this we see that this is just a game with our lives to them. No preparation, no discussion, no evidence just walk away with billable hours and the client be damned, I mean ruined.

Did not this same **transcript O** verify that Attorney Nelson Weston of Richardson and Plowden Law Firm lied to the court by holding to the deception that the property was of much lesser market value than the appraisal he had in hand for $450,000?

Although Attorney Nelson Weston straight out lied and deceived the court by stating "There is no equity in the property." **See lines 12 and 13 of page 13 of transcript hearing at attachment P**. No one in the court was willing do anything to include our attorneys, why?

Was that not blatant deception for Attorney Nelson Weston to testify of a falsehood when he knew that falsehood was not correct based on his own appraisal which was in his possession? Was that not deceptive to mislead the Judge? For you to know to do right and doeth it not to him is sin. He profited off a known blunder of Davis who is now suspended from practicing law while he, a seasoned liar moves on to the next victim. Is this justice in the courts of South Caorlina?

Was it not his intent to frustrate the truth and provide a lower validation of the property that he would have the automatic stay lifted? What was his duty as an officer of the court in this matter?

Did not Nelson Weston knowingly violate regulatory requirements and commit fraud. **See attachment Q, Appraisal Regulations of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), credentials of an senior appraiser and expert validation professional, affidavit stating that the**

market value of the property greatly exceeded that of the Bankruptcy Court – Steve Siegel and the Interagency appraisal and Evaluation Guidelines dated 2 Dec 2010

Taken into context of what Nelson Weston knew at the time of this transcript was that his own appraisal was $450,000 and he deceived the court that the market value of the property was $306,000.

By suppressing the correct market value of appraisals $450,000 and $557,000 to the Court by the United States Trustee the outcome of equity in property compared to that which was owned the bank was center and core to the confirmation. Yes or No? What she knew and when she knew it was vital to being upfront with the judge and the creditor. She withheld the facts for, Charles Webb, Nelson Weston, for certain South Carolina Community Bank, the Judge, John Davis and the vendeatta

Be it known that this is our SIXTH package of facts presented to the powers to be and all we have gotten is the run around. We ask again for justice to be executed by the removal of Linda, Cooper, Pohl, Weston, Webb and Duncan. To open an investigation and prosecute all involved to the fullest extent of the law. Return our properties and make a way for damages to be collected. This is only fair.

Our future would have been undamaged, success of our businesses and tenant's businesses would still be. They effectively crushed our business incubator for women & minority owned firms and removed our HUBZONE certification by stealing our property.

Did the United States Trustee have a duty to correct known omissions and erroneous information put forth to the Court by either debtor or creditor attorneys? What is her explanation or explanations for these failures?

What must be established for a cause of action for fraud? Have not all nine elements been proven by clear, cogent and convincing evidence based on Linda Barr, Webb, Cooper, Pohl, Davis and Weston actions and inactions?

What was the purpose of the same United States Trustee overseeing both Chapter 11 cases? What was Linda's knowledge of both cases based upon transcripts in her own words?

Weston said it all in his statement, **see attachment O page 23, line 1** where he says, "Not **my problem!"** We contend that it is his problem and liability as well for lying to the court in order to steal commercial properties by fraud.

What is the purpose of the judge of the court if it is not to be the finder of the facts?

What is the responsibility of the United States Trustee as it pertains to the honest reporting to the court of the facts?

Did United States Trustee know or should have known based on her being an integral part of both cases that the property had substantiate equity?

Did the United States Trustee know that the property provided adequate protection to the bank for confirmation? Did Cooper have an opportunity to prove equity in the property is he liable?

Was the law firm Richardson and Plowden the bank's law firm for both bankruptcy cases?

Did the law firm communicate to the bank based on its review of the appraisal that the bank and City of Columbia jointly paid for, that based on what was owned bank and what the appraisal market value demonstrate that there was plenty of equity in property and it was adequately protected?

If the Court was made aware by the United States Trustee that large amount of equity was in the property would the motion to lift the stay been denied? What are the damages from day one of the dismissal of our case by Duncan quantified?

If the United States Trustee would have ensured that the automatic stay was not lifted could the bank foreclose on the property?

What are the damages based on the lies propagated by the United States Trustee and the bank's attorneys on the debtor? Was ineffective of counsel proven on Pohl, Davis and Cooper?

Was the United States Trustee aware that foreclosure could not have taken place and other creditors would have benefited from debtor if the judge had been made aware of the equity in the property? How have the other creditors suffered in terms of dollars from the United States Trustee failing to do her job?

Was United States Trustee aware of the confirmation and two years of debtor fulfilling all the obligations of confirmation in previous case? Would the likelihood of a prior confirmation case support the likelihood of the case in question being fulfilled based on past performance? Why was the United States Trustee bias of that fact and not report it to the court yet came to the defense of the incompetent John Davis now suspended from practicing law and under investigation by the South Carolina Supreme Court Disciplinary Counsel, instead of the civil rights of the debtor?

Did the United States Trustee's office fail the court, debtor and other creditors in withholding facts that bank committed fraud upon the court and debtor and not raining in Linda Barr actions? Who is Linda Barr's boss and what role did he play in permitting her to go rogue all this time?

What is a maximum punishment for a United States Trustee when found to have manipulated the Court in order for a commercial property from a person (debtor) be granted to the Bank (creditor) unlawfully?

If Linda remains in her position after creating this mess what is the livelihood this illegal activity will occur again?

Why has the bank's fraud not been reported to the SC Attorney Office for investigation to date?
Does the UST have a responsibility within her job description to forward suspected fraud to the SC Attorney Office? Have Davis been referred to the SC Attorney Office for fraud upon the Court?

Moreover, what is the likelihood of the law firm that committed fraud against the Court on behalf of this corrupt Bank to continue this corruption against others? Is this what Congress intended when it set up the bankruptcy court?

Did the tenants that were in the commercial property at the time of eviction incur a financially injured because of wrongful foreclosure on property?

What is the difference in attorney Davis', Pohl's and Cooper's stories as to why they each refused to subpoena the Appraiser Mr. Crider, the author of the appraisal that prove large equity in this case, to substantiate adequate protection for the court to confirm case?

What were their correct responses by the court if they elected not to honor the client's lawful request? Why did they not withdraw by motion to the court?

Did their refusal to execute client's request to subpoena the appraiser in order to get the appraisal into the record for which the Judge would then have to consider harm to their client? Are they not liable for their refusal to act on debtor's behalf? Specifically, as it pertained to equity and or financial damages in the property?

By each of them refusing to carry out the direction of their client does it amount to suppression of the facts and unethical conduct? Was their refusal to have the appraisal entered into evidence with the record amount to it materiality? Was misrepresentation of a fact amount to fraud, either knowledge of its falsity or a reckless disregard of its truth? Was the misrepresentation acted upon? Was the hearer's ignorant of its falsity? Did the hearer's reliance on its truth? Was it the hearer's right to rely thereon? Was hearer's consequent and proximate injury?

What would the benefit of the bargain approach, according to which the plaintiff is entitled to the difference between the value we would have received if the defendant's representations had been true and the value we actually received together with any proximately caused consequential or special damages?

Why did they each refuse to execute the task of subpoena when they knew it would benefit their client? Is it the fact of "this is where I eat" syndrome? That syndrome (or fear) is to not offend the UST as their business world (book of business) would be directly impacted negatively as to how the UST would mistreat them and their clients on future case proceedings. Are there inferences to that fact in communication between these attorneys that the lawyer will determine only what goes into and out of the case? Do they each have liability to damages to their client for not exercising their responsibility to their client under errors and omission insurance? What would those damages entail? Who are their errors and omission insurance agencies?

The capacity is necessary to comprehend this serious corruption role that we are forced to endure because of fear on these attorneys to oppose the UST, Linda Barr? Is it a fact that these cases cannot be realized until an investigation is conducted to its fullest. That the Judge have provided and or permitted such fear and authority to this trustee must be evaluated as well.

Double standards have let the debtor down and armed the UST to decide cases. The court proceedings are just a formality. These attorneys have polluted the table of justice.

Taken in context of the above cases, the deception upon the debtor is deceitful from the outset of signing a contract for these attorneys to represent them. Could this be wide spread in this court? The UST is double-dealing, acting in a pretense of justice while overseeing a flimflam. Leslie has acted as a "stonewall from justice." Can she be summons in for questioning?

Now we find that the South Carolina Supreme Court Disciplinary Counsel, Attorney Leslie M. Coggiola the director is gone how we can be assured that the office is not in lockstep and immersed in the cover up of corruption of the Bankruptcy Court in Richland County?

Linda and Leslie literally stands in breach of the office and fair dealing based on evidence of corrupt attorneys brought to their attention. How can I pursue happiness if I'm paying into a system of corruption that steals away my rights of justice?

How ironic that the President of the University of South Carolina sits on the board and is ultimately tied to wanting our property 1811 & 1815 Gervais Street, Columbia, SC. The university churns out hundreds of attorneys per year like no other and gives guidance through teaching integrity and fairness, yet he is silent behind these crimes. Public Corruption cannot be tolerated.

We have personally made USC President aware of these crimes as he has influence and authority to act based on his position on the board. He has not responded nor given any guidance to the board of Counsel concerning these matters, that we are aware.

Silent and absent in these dealings is he to date. He gives speeches and aspires to growing the blood of Garnet and Black up and down our streets. We are one of two places on Gervais Street that have not given way to the expansion to USC becoming a College Town. We are for it but not by theft. These two places are Wesley United Methodist Church and Gervais Professional Suites. We have great expectations of our complaints being resolved equitably?

To abdicate implies a giving up of sovereign power or sometimes an evading of responsibility such as that of a parent. Not only have Linda and Leslie done this they have also obstructed justice, advocated for injustice and committed conspiracy to commit fraud as a byproduct of doing nothing.

Moreover, Linda's abuse of authority puts her as a part of the creditor's team instead of a United States Trustee carrying out Bankruptcy responsibilities for both the creditor and debtor as Congress intended when they made the position.

Our request for an open and full investigation into South Carolina Community Bank's fraud against the Court to steal commercial property through foreclosure proceeding is warranted. Simultaneously remove Linda and all others involved.

Our complaint is warranted also the disgust and disappointment we feel for the lawyer ship we received. I perceived Attorney Robert Cooper was for me an along the way I discover I'm just a meal ticket that had no say so once I paid my money.

Our contention is three complaints:

First, Cooper over rode our expressed requirement to provide us anything that was to be submitted on our behalf that it too FIRST come through us for approval. He took it upon himself to submit an erroneous schedule to the Court, specifically to Attorney Linda Barr that negated the correct figures thereby substantiating the Creditor's view and Judge's view concerning the equity issue which is core to our confirmation. This is also what the Appeals Court used to confirm David Duncan's dismissal of our case. If we had viewed the document we would have stopped the press and had him correct it. This is more trash to unwind. This case is a mess.

Secondly, there is no good in it at all for Attorney Cooper to fail and negate his responsibility and fiduciary duty to have submitted the market value of 557,000 for the property of 1811 & 1815 Gervais Street, Columbia, SC 29201. Instead Attorney Cooper resubmitted the identical wrong amount, of now suspended Attorney John Davis, incorrect figure of $306,000. That was incorrect and core reason why I hired Attorney Cooper to have corrected. Moreover, he failed to submit a corrected schedule after it was brought to his attention. This begs the question of why not?

Thirdly, I explicitly instructed Attorney Cooper to subpoena Appraiser Crider who was paid in full by me to conduct an appraisal for the market value of the above properties to eliminate David Duncan's issue of equity

and his explanation as to denying Attorney John Davis' "hear say" and "rankness". In Cooper efforts to substantiate the appraisal market value of 557,000 thousand dollars for inclusion into the record for his consideration the Licensed Appraiser had to testify to his work product. He could have submitted a corrected schedule and sent a subpoena to Crider the appraiser. Why Not?

Attorney Cooper inactions blocked my efforts for getting my chapter 11 major prong (essential) fulfilled for confirmation. It would have cleared the question of the property having adequate protection for the South Carolina Community Bank. This also assisted the Bank attorney's fraud upon the Court and against me.

Why would Robert Cooper undermine my case yet take my money as if he was expressing efforts to have our case confirmed? Why was Cooper not prepared for court?

Was it that Cooper was afraid of United States Trustee Linda Barr's defeat in this court matter? It looks like he fell into the same trap as Davis. It seems their thinking was thus: Hide our evidence of equity, let client fall and we live another day and may even get favor in our future cases with the UST & Judge.

Was it his incompetence or attorney negligence? Not from his (COOPER) Engagement letter stating his 25 years of experience. It is also clear we paid him top dollar. **Attachment R, Engagement letter of Cooper.** Should not his representation of services owe us a duty of loyalty and commitment not to breach his duty or represent any party with an interest adverse to our interest? Should I not have expected diligence and promptness to keeping me fully informed or act without my consent? Is it not reasonable to have expected for Cooper to comply with providing material for approval prior to submission? Consent is part of representation. Why was his conduct adverse to our good? Was it for more money? What was it? He certainly failed us.

Was it his relationship of fear from Linda Barr and Duncan upon himself and future clients that he would defend? No matter the explanation Attorney Cooper did not act in our best interest but his own.

It is our belief that Attorney Davis, Attorney Cooper and Attorney Eddye Lane and Attorney Jonathan Milling all weighted their obligations to me, their client, and their future business interest. They each chose to abandon me. The difference is their legal obligation was deliberately side stepped to our injury by two of the four attorneys. Attorney Cooper and Attorney Davis failed their responsibility to us, their contract terms and conditions and their oath. Rather they each took our money an argued to the contrary until we bought them to the agency that could strip them of their future business.

Both Milling and Lane spoke with me, sent me emails, correspondence that they were unwilling to take actions that they were obligated to execute on my behalf. The major difference and the legal correct manner were executed by both Eddye Lane and Jonathan Milling. They each petitioned the court to withdraw as counsel to the Court and making the issue become apparent on the record. More importantly it would have put the matter in a correct and legal posture for us to get another attorney to defend us especially the chapter case complexity as one must have attorney representation to enter the Court. The wreck less behavior of Cooper, Davis and Pohl compared to their duty was part of our demise for Duncan and the Appeal court. Robert Cooper was part. Robert Cooper told us to go to the media, to our congressmen, even to Disciplinary Counsel over Barr, Davis, Webb and Weston when he was protecting his own interest and wanting publicity for himself. All along this journey Cooper was denying our right of paid contracted attorney services.

See Attachment S. Motion to Reconsider Motion for relief from stay whereas scolding of Davis by Judge Duncan takes place see page bottom of 13 and top of 14 in the transcript of Motion to Reconsider. The see **Attachment O, page 16** bottom section in which the same actions Cooper repeated and receive the same treatment. Is this not ineffective assistance of counsel? What was really going on?

Charles Webb and Tom Felder, the previous South Carolina Community Bank president, well knew that I only owed 340,000 for a property well valued at nearly double that amount and that was back then. **See Attachment T.** 362 Motion dated January 7, 2015 and Tom Felder's independent public accounting firm, Elliott Davis, LLC annual audit of our financial status, Loan 125096 to include the bank's failure to meet its burden of proof, except for the deception that got them the illegal victory.

Attorney Nelson Weston: To claim a lie as truth and report it **is lying**. For the essence of a lie is to deceive in order to further ones cause. If it were not a lie to Webb it was certainly a lie of Attorney Weston to knowingly deceive the court, multiple times, with the wrong market value of the property. This was not based on Davis schedules this was based on his own volition to steal the property by manipulation. This is fraud across the board. Still he is standing on a lie hoping this pass by. This will not go away. The bank and its law firm are liable and we need legal investigation and prosecution to remedy the court's mishandling of our estate.

For Attorney Nelson Weston to lie when he had the facts (truth) his aim was to deceive the court that the property had no equity. By changing his figures to the lesser number of 306,000 demonstrate deception and his willful disregard for his position as an officer of the court. A lie is a lie NO matter who tells it.

To say Nelson Weston did nothing wrong is to embrace the symbolic destruction of the court as it is the nerve center for the finder of facts (truth) within a matter.

These attorneys, Nelson Weston and Charles violated their oath of office to lie to the court in order to steal a property which is their second crime for which punishment should be demanded. When the foundation on which this court made its decisions is based in a lie applied to a federal judge, as truth, the entire case must be thrown out.

The erosion of justice starts with just one "lie replacement" for truth. The entire barrel becomes corrupted.

The purpose of Cooper and Pohl representing Gary, Michele and Carolina Procurement Institute, Inc, was to correct, make right, what Attorney John Davis had planned to help take a rightfully owned property of the Washington's and give it over to the bank.

Cooper and Pohl jobs were being the Washington's advocate first and foremost. Cooper and Pohl actions were NOT supposed to be on helping the bank take the property They each played an important role in ensuring the Washington's interest were not protected. However, they decided together to relinquish, forsake and desert their client by casting aside evidence of fraud by the bank and not substantiating equity in the property by subpoenaing the appraiser, Mr. Crider or for that matter the Bank's appraiser also.

They too became part of the deception of the bank by refusing to put forth the facts through court proceedings and by instruction from the Gary Washington. The refusal to bring in their key witness, the appraiser, made the appraisal of no use. Thus the consequences were against their own client's interest which should have been against their interest as well. Their failure in this regard and not filing a proper disclosure statement stole from the court valuable facts that would have placed substantial equity in the property proving adequate protection.

Attorney Linda Barr role was even more deceptive and precise for the cutting away of the truth from the court as she reiterated a known falsehood against the debtor in order to protect a fellow attorney John Davis. All the while she was acting in the role and appearance as a fair arbitrator on behalf of the court and estate. But beneath the surface of the record she promoted and profited the bank in spite of her responsibility as United States Trustee.

To promote deceptive means of untruth to the court in order to steer an outcome is to conspire against the truth of a matter. If the UST could not protect the civil rights of the debtor then she should have, at least, exposed the criminal activity and conduct of the bank and its attorneys to the court for the record.

If you can't save the castle protect the people. Even if she could not protect the institution she should have protected the debtor thereby protecting other creditors as well, i.e. the people.

Linda Barr deliberately failed at both. In the end she could not even protect Davis in her efforts to deceive. The South Carolina Supreme Court Disciplinary Counsel expert investigative person determined that he is unfit to practice from the activities of my case and others based on what Leslie shared with me.

Now it is Linda's turn to be up for her behavior evaluation by an investigation and we hope and request she is dealt with as a traitor to her oath of office. This is an undisputed fact.

For these reasons this highly unorthodox corruption scandal led by South Carolina Community Bank, Chairman Mr. Paul Mitchell, was found out. Because such corruption is within the body of the justice system it merits extreme measures of correction and a signal of future intolerance for such players.

Again, we request an order for an injunction to stop all proceedings on the property and the assignment of special expert investigation teams, forensic ecommerce FBI agents, be enacted to gather all facts and findings to be forwarded to the South Carolina Attorney Office with the recommendation of investigation and prosecution in open court of all parties involved. Public corruption, unethical conduct and fraud upon the court warrant no less action.

We truly believe if it were not for forensic ecommerce investigation, **See Attachment U, Email exchange between myself and now suspended Attorney John Davis**, that the gathering of information to prepare the case for the South Carolina Disciplinary Counsel outsource bankruptcy investigator would not have been reveal. Thus, John Boy would be still robbing folks. I say that to say we need specialist that can put this case together for air tight efficiency. It will cost money but it is well worth it.

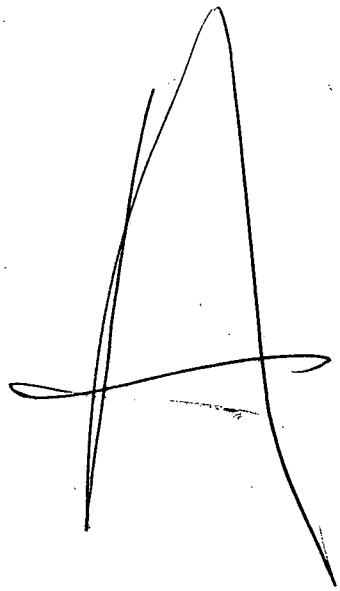
Crime breads crime. This theft was a concerted effort by several people **within** the Court's arena. This Court's behavior should not be permitted to continue.

These type cases require the unwinding of facts in context for accountability, compliance to the law, of attorney responsibility and prosecution of wrong doers. To inhibit truth is to elevate evil.

Lastly, Senator Tim Scott provided me your contact information and directed me to contact you. Should you need any of the information, documentation or clarification of which was mentioned above, my contact information is below.

Gary Washington, President
Carolina Procurement Institute, Inc.
803 238-4542 cell, gawcpi@att.net

Attach



From:

Mr. Gary Washington, Owner
Gervais Professional Suites, PA
2917 River Drive
Columbia, SC 29201

March 5, 2018

TO:

Supreme Court of South Carolina
Daniel E. Shearouse
Clerk of Court
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29201

The Banking Commission
Robert L. Davis and Kathy L. Bickham
Commissioner of Banking and Assistant, respectfully
1205 Pendleton Street, Suite 305
Columbia, SC 29201

SC Attorney Office
Wells Fargo Building
1441 Main Street Suite 500
Columbia, SC 29201

Subject: Submission to the Supreme Court to remove Leslie Coggiola, Director of SC Supreme Court Disciplinary Counsel, an order an investigation into my dismissed case based on fraud against the Court by United States Trustee Linda Barr, South Carolina Community Bank and Richardson & Plowden Law Firm. There are Regulatory Violations by the Bank and Public Corruption

We have a bank, South Carolina Community Bank that has certainly committed fraud against our company, the Court and it involves commercial property, appraisal equity and Chapter 11 Bankruptcy cases. These cases are steeped in Public Corruption to steal property for University of South Carolina and South Carolina Community Bank in order to build a parking garage. These cases are steeped in Public Corruption and must be considered together in order that the fraud and Bankruptcy Court's vendetta are revealed.

Thus far we have managed to get one attorney's law license suspended, Attorney John Davis, pending an investigation by the South Carolina Supreme Court Disciplinary Counsel. The property has over 250k and USC wants to purchase it from the bank.

The unethical conduct of Leslie Coggiola is consistently damaging. She has demonstrated subjective decision making instead of objective decision making based on the facts of our five complaint packages against United States Trustee Linda Barr. Basically the United States Trustee ignored our civil rights as did Leslie Coggiola while exercising a vendetta against us and assisting in fraud against the Court in order to dismiss our chapter 11 case before Judge Duncan. He too is part of the problem in getting a fair ruling based upon the bankruptcy law as he has helped orchestrated this injustice with Linda.

Form 950BNC (Revised 04/28/2014)

United States Bankruptcy Court
District of South Carolina

Case Number: 14–05589–dd Chapter: 11

In re: *(Debtor(s) name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address)*

Gary Allen Washington
1324 Furman Drive
Sumter, SC 29154

SSN: xxx–xx–2294

Michele Anne Washington
1324 Furman Drive
Sumter, SC 29154

SSN: xxx–xx–9784

Entered By The Court
4/24/15

ORDER

Filed By The Court
4/24/15
Laura A. Austin
Clerk of Court
US Bankruptcy Court

Order Motion to terminate counsel for the debtors filed by Gary Allen Washington, Michele Anne Washington. Motion is granted to the extent that it requests counsel be relieved of any duties in this case. The Court retains jurisdiction over any issues regarding counsel's fees. AND IT IS SO ORDERED. Signed by: Chief Judge David Duncan, US Bankruptcy Court – District of South Carolina (related document(s)43).

Document 48 – 43

Chief United States Bankruptcy Judge

SUN-21506 0420-3 950BNC 14-05589
BAE Systems
Bankruptcy Noticing Center
2525 Network Place, 3rd Floor
Herndon, VA 20171-3514

049361 49361 1 AB 0.403 29154 7 8 7775-1-49743

Gary Allen Washington
Michele Anne Washington
1324 Furman Drive
Sumter, SC 29154-1420

049361 21506049410017

demonstrates that Davis performed work for the Debtors pre-petition but was not paid for the work prior to the filing of the petition. This makes him a creditor of the estate. 11 U.S.C. § 101(10)(A). Section 327(a) provides that debtors in possession "with the court's approval, may employ one or more attorneys … that are disinterested persons." Section 101(14) defines a "disinterested person" as one who is "not a creditor." Thus the plain language of the Bankruptcy Code precludes employment and an award of fees. *See United States Trustee v. Price Waterhouse*, 19 F.3d 138, 141 (3d Cir. 1994) ("These provisions, taken together, unambiguously forbid a debtor in possession from retaining a prepetition creditor to assist it in the execution of its ~~Title~~ 11 duties.").

The Application is denied. Debtors' Motion is therefore granted in part. Davis shall return to the Debtors $4,533. Debtors' request for additional sanctions is denied.

AND IT IS SO ORDERED.

FILED BY THE COURT
09/17/2015

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

Entered: 09/18/2015

David R. Duncan
Chief US Bankruptcy Judge
District of South Carolina

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

CASE NO: 14-05589-DD

CHAPTER 11

GARY ALLEN WASHINGTON
MICHELE ANNE WASHINGTON
1324 FURMAN DRIVE
SUMTER, SC 29154

Debtors-in-possession

MOTION FOR DISGORGEMENT OF ATTORNEY'S FEES AND FOR SANCTIONS

The debtors-in-possession ("also debtors" hereafter) in this chapter 11 matter, Gary Allen Washington and Michele Anne Washington, now come before this Honorable Court to request that the Court enter an Order commanding the debtors' former counsel, Jonathan L. Davis ("a/k/a Jonathan L.B. Davis") to disgorge fees he was paid by the debtors prior to this Court removing him as counsel on Motion of the Debtors. The debtors also ask that the Court sanction said counsel for reasons stated in this Motion.

On October 3, 2014, counsel for the debtors, Jonathan L. Davis filed the debtors chapter 11 petition and related documents. Prior to that filing, the debtors had sought counsel for their financial problems, which included businesses owned by one or more debtors. Such businesses included ownership of certain commercial rental properties and a residential apartment building. In discussions with Mr. Davis, the debtors were advised that he had considerable experience in chapter 11 matters, and that he was fully capable, based upon prior experience, of handling their chapter 11 case.

Records of the Clerk of Court, United States Bankruptcy Court for the District of South Carolina, and a records search nationwide via CM/ECF and PACER, show no chapter 11 cases other than the present one that Jonathan L. Davis filed as attorney of record. Upon information and belief, therefore, statements made by said attorney to the debtors were false.

This became apparent when Jonathan L. Davis failed in multiple respects to abide by bankruptcy rules and procedures that are required by every attorney in every bankruptcy case. The first such failure occurred on October 3, 2014 upon the filing of the debtors' voluntary petition in this case. Page 2 of such petition asks the attorney to list all prior bankruptcy cases filed in the last 8 years. Mr. Davis answered that question as "none", yet he was abundantly aware of the fact that the debtors had filed prior bankruptcies in the 8 years prior to the filing of the instant case. Moreover, a simple check of PACER and EM/ECF, the Court's electronic information sources, would have revealed this. Failure to report such prior cases has been held in this District to be a sanctionable offense. In the debtors' schedule "A" and "D" filed with the Court on October 17, 2014, Mr. Davis listed the value of the two commercial properties located at 1811 and 1815 Gervais Street in Columbia, SC as $306,300, yet he listed the debt balance owing to SC

Community Bank as $366,000. This reflected Mr. Davis' inexperience in matters of this type, because he was virtually admitting that the property contained no equity, which would as any experienced bankruptcy attorney knows, would be used as an admission in any motion to vacate the "automatic stay" as to those properties, which as is later addressed in this motion is exactly what happened in the case. In his Application to be employed as counsel and in the affidavit attached thereto filed with this Court on November 14, 2014, Jonathan L. Davis does not elaborate upon his experience in the field of chapter 11, but instead, simply states that his law firm has considerable experience in the field of bankruptcy. Upon information and belief, Jonathan L. Davis has been attorney of record in 455 bankruptcy cases, only one of which was chapter 11, which is the instant case. The record in this case reflects that Mr. Davis filed his Application for Employment 42 days after the petition date, which violates the custom in this state that an attorney must file said application within 30 days of the petition date, or risk sanctions, which could include disgorgement of fees allegedly earned between the petition date and the filing of the application. A plethora of bankruptcy case court rulings throughout the United States mirrors that requirement.

Mr. Davis filed the debtors' schedules and statements of financial affairs on October 17, 2014. These consisted of 43 pages. The First Meeting of Creditors was held on October 27, 2014. At the meeting of creditors, an attorney for the Office of United States Trustee moderating the meeting, pointed out multiple discrepancies in those documents, and asked Mr. Davis to correct those deficiencies. The record of that meeting indicates that Mr. Davis was confused at best, but the debtors' opinion was that he was simply incompetent in his handling of the matters at hand. Subsequently, the debtors were forced to expend additional time assisting Mr. Davis with corrections to the documents. This resulted in Mr. Davis' filing of an additional 32 pages of documents on November 6, 2014, labeled "amended schedules B, C, D, E, F, G, H, I, and statements of financial affairs." Therefore, Mr. Davis amended 9 of 11 of the schedules and statements he filed in the case. Moreover, for the first time in the case, Mr. Davis filed the "fee disclosure statement" required under FRBP 2016 and 11 USC section 329. Those sections reflect a duty upon the debtors' attorney to file a written statement of compensation received and to be received, along with certain other information, and to do so within 15 days of the filing of the petition. Therefore, Mr. Davis violated these sections by filing his Rule 2016 fee disclosure statement 34 days after the petition filed in this case. Upon information and belief, Mr. Davis was prompted to file this statement by an attorney employed by the Office of United States Trustee. Multiple courts facing this issue have ruled that sanctions should be issued against an attorney, who does not follow these rules, including disgorgement of fees. See In re Kisseberth, 273 F.3d 714, 720 (6th Cir. 2001) in which the Court stated as follows: "An attorney in a bankruptcy case has an affirmative duty to disclose fully and completely all fee arrangements." See also In re Investment Bankers, Inc., 4 F.3d 1556,1565 (10th Cir. 1993) in which the Court stated as follows: "Accordingly, an attorney who fails to comply with the requirements of section 329 forfeits any right to receive compensation."

Subsequent to Mr. Davis' filing of amended schedules and statements of affairs, he was advised that those documents still did not accurately reflect facts provided by the debtors. Upon information and belief, Mr. Davis was advised by the attorney employed by

an amended motion for relief. Upon the filing of such a motion, the debtors have 14 calendar days in which to file an objection. Moreover, in the motion and amended motion, the attorneys are clearly indicating that deadline to the debtors' attorney. The deadline, therefore, for filing an objection to the motion would have been December 23, 2014, and to the amended motion, December 24, 2014. Additional notice of the exact deadlines is stated in the Court's CM/ECF system, which all practicing bankruptcy attorneys use as an everyday tool in such practices nationwide.Nonetheless, attorney Jonathan L. Davis filed his objection on December 29, 2014, five days after the stated deadline. This failure could have resulted in the Court disallowing the objection, and issuing sanctions against said attorney.

In the objection that Jonathan L. Davis did file on December 29, 2014, he stated the value of the two commercial properties was $306,300, based he stated on the schedules filed with the Court. Yet, as the debtors will testify, Mr. Davis had in his file a formal appraisal conducted by Rosen Appraisal Associates located at 1717 Laurel Street, Columbia, SC. That appraisal per the Rosen report dated January 22, 2013, was $425,000 for the two properties. Even the movant lender in its motion to vacate the stay listed the value at $450,000. Additionally, Davis listed the net balance due the lender as the full original balance of $488,976.87, and not the $366,509.64 net balance, based upon a prior modification of the loan. The same figures were listed in the amended motion to lift stay. In essence, Mr. Davis was making the movant's argument for the lifting of the stay for them. Nonetheless, Mr. Davis' errors and lack of knowledge of these bankruptcy matters, or at least his failure to properly address same, survived the January 7, 2015, hearing on the stay lift motion as the movant made a proposal to resolve the matter by a restructuring of payments, a demand that the debtors' sell one of the buildings without the lot upon which it is situated, and demand for a confession of judgment from the debtors for the full $488,976.87 balance that was due prior to the agreed upon modification, which resulted in the actual net balance due in the amount of $366, 509.64.

On January 21, 2015, the lender again filed a motion to vacate the "automatic stay" in spite of the fact that an agreement resolving the stay lift issue had been stated on the record at the January 7, 2015 prior motions hearing. In its motion for relief from the stay, the movant said absolutely nothing about the prior agreement, and why it was again seeking relief after stating a settlement of the matter on the record two weeks earlier. Even worse, attorney Davis in his objection to the movant's motion said absolutely nothing about the settlement, nor did he question the movant's motives or reasoning for again bringing the action. He instead, simply restated the few sentences used in his previous objection, and he once again used the low value for the property and high balance on the note, in essence therefore, making the movant's case for it. In spite of Mr. Washington's pleas that Mr. Davis use the formal appraisal and correct net balance, Mr. Davis refused to do so.

Upon information and belief, Mr. Davis appeared not to understand that two very important issues for overcoming a motion to lift the stay are (1) proving that equity exists in the subject property, and (2) proving that the property is necessary to an effective reorganization. Had Mr. Davis introduced the formal appraisal or at the very least attached it to his objection to stay relief, and reflected the value of the properties stated

the Office of United States Trustee that the documents were incorrect and/or incomplete. Therefore, on November 18, 2014, Mr. Davis again filed amended schedules consisting of 22 pages, which included the following: "amended voluntary petition, amended schedules B, I,and statements of financial affairs. Moreover, the preparation and corrections to the schedules and statements caused the debtors to expend additional time assisting Mr. Davis with such amendments and corrections.

In Mr. Davis' Rule 2016 Fee Disclosure Statement filed on November 18, 2014, he reported that he had received as attorney's fees the sum of $9,000, plus the $1,717 court filing fee that was required. Additionally, in his amended statement of financial affairs #9, he reported that he had received the sum of $9,000, plus the $1,717 filing fee. In the Rule 2016 Fee Disclosure Statement, Mr. Davis reported to the Court that the fees paid him were paid by the debtors. In fact, the fees were not paid by the debtors, but instead were paid by the debtors' corporation known as "Carolina Procurement Institute, Inc."

On November 25, 2014, Mr. Davis filed for the first time a "Report under FRBP 2015.3," which is required in all chapter 11 cases. The report requires the debtors to file periodic reports, "no less frequently than every 6 months", and beginning "seven days before the first date set for the meeting of creditors under section 341 of the Code." These reports must include financial reports of the "value, operations and profitability of each entity that is not a publicly traded corporation or a debtor in a case under Title 11, and in which the estate holds a substantial or controlling interest." The first date set for the meeting of creditors in this case was October 27, 2014. Seven days prior to that date would be October 20, 2014. Therefore, Mr. Davis filed the required report 36 days after its due date. A subsequent such report was due no later than April 20, 2014. No such subsequent report was ever filed. Mr. Davis' failure to file these reports subjected the debtors to dismissal or conversion of their case. See 11 USC section 1112(b)(4), which states that one of the grounds for the Court dismissing or converting a chapter 11 case includes: "unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter." Upon information and belief, Mr. Davis was advised to file the report by an attorney employed by the Office of the United States Trustee, and that he likely was not aware of the requirement to file such reports.

On December 1, 2014, the Court ordered Mr. Davis to serve its Order Approving his Application for Employment as counsel for the debtors under SC LBR 5075. Mr. Davis has to date failed to do so. On December 3, 2014, the Court ordered Mr. Davis to serve his Application to Employ Vincent Barkley as bookkeeper for the debtors under the same local rule. Mr. Davis has to date failed to do so. Mr. Davis had four and one-half months to follow the Court's instructions, prior to the Court relieving him of counsel on April 23, 2015, but failed to do so.

On December 9, 2014, attorneys for South Carolina Community Bank filed a motion for relief from the automatic stay under section 362 of the Bankruptcy Code.They sought to vacate the stay as to commercial properties owned by the debtors that are located at 1811 and 1815 Gervais Street, Columbia, SC. On December 10, 2014, those attorneys filed

therein, the debtors would have been in a greatly enhanced position in succeeding in overcoming the stay lift motion. The debtors are of the belief, therefore, that Mr. Davis' failure to take the position that equity did in fact exist in the property, subject to the above-stated formal appraisal, and his failure to state the correct net balance as stated above, caused the "automatic stay" of 11 USC section 362 to be vacated, and may cause them to lose that property, and the equity contained therein. The Bankruptcy Court issued its Order Granting Relief from the Stay to SC Community Bank on February 26, 2015.

On April 8, 2015, the Court ordered Mr. Davis to serve its Order Conditionally Approving the Disclosure Statement under SC LBR 5075. Mr. Davis has to date failed to do so. Also, on April 8, 2015, the Court ordered Mr. Davis to serve its Order Denying Motion to Alter or Amend "lift stay" under the same local rule. Mr. Davis has to date failed to do so.

On June 22, 2015, noting that the "automatic stay" had been vacated by the Bankruptcy Court as to the two commercial properties located at 1811 and 1815 Gervais Street, Columbia, SC, the Richland County Master-in-Equity issued a foreclosure judgment in favor of the lender, and has scheduled a foreclosure sale for August 3, 2015.

7. The Debtors have failed under the terms of the Note, Mortgage and Guaranty Agreements to make the minimum monthly payments to the Movant on the Account since March 6, 2014. The Note as modified matured on March 6, 2014.

8. Accordingly, the amount due and owing Movant on the Account is the entire balance of $369,781.72, as of January 7, 2015, this amount includes secondary accrual interest at the rate of 4.50% per annum. ← WRONG

9. The Movant estimates the fair market value of the property subject to the Note as modified and Mortgage to be $306,300.00 per schedules provided by the Debtors. This amount may have been reduced due to the market conditions. Should be 420K

10. The Debtor has failed to make any post-petition payments to Movant nor has Borrower made payments since March 6, 2014 and the Note as modified has matured.

11. The Movant is informed and believes that it holds a lien on the subject property by virtue of the Movant's perfected Mortgage.

12. Accordingly, Movant is informed and believes that the Debtor is in default under the terms of the Note and Mortgage due to the fact that the Note matured on March 6, 2014; that the Debtor has failed to provide adequate protection; that there is no equity and the property is not necessary for reorganization; that the Movant's protection represented by the collateral is therefore jeopardized; and the automatic stay provision of Section 362 of the Bankruptcy Code should be terminated as to the subject property to allow Movant to foreclose its purchase money security interest in state court.

13. The Movant agrees to waive any claim that may arise under 11 U.S.C. Section 503(b) or Section 507(b) as a result of this Order.

There is 51K equity based on Richland County Appraisal of 10/15/12 Foreclosure

/s/ Katie C. Tager
Katie C. Tager, Legal Assistant
Richardson, Plowden & Robinson, P.A.
1900 Barnwell Street
Columbia, South Carolina 29202
(803) 771-4400
Attorneys for South Carolina Community Bank

South Carolina

JUDICIAL DEPARTMENT

2017-09-07-01

The Supreme Court of South Carolina

In the Matter of Jonathan L.B. Davis, Respondent.

Appellate Case No. 2017-001783
Appellate Case No. 2017-001784

ORDER

The Office of Disciplinary Counsel asks this Court to place Respondent on interim suspension pursuant to Rule 17(c) of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). The petition also seeks appointment of the Receiver pursuant to Rule 31, RLDE, Rule 413, SCACR.

IT IS ORDERED that Respondent's license to practice law in this state is suspended until further order of this Court.

IT IS FURTHER ORDERED that Peyre Thomas Lumpkin, Esquire, Receiver, is hereby appointed to assume responsibility for Respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office accounts Respondent may maintain. Mr. Lumpkin shall take action as required by Rule 31, RLDE, to protect the interests of Respondent's clients. Mr. Lumpkin may make disbursements from Respondent's trust account(s), escrow account(s), operating account(s), and any other law office accounts Respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating account(s) of Respondent, shall serve as an injunction to prevent Respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that Peyre Thomas Lumpkin, Esquire, Receiver, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Peyre Thomas Lumpkin, Esquire, Receiver, has been duly appointed by this Court and has the authority to receive Respondent's mail and the authority to direct that Respondent's mail be delivered to Mr. Lumpkin's office.

Mr. Lumpkin's appointment shall be for a period of no longer than nine months unless an extension of the period of appointment is requested.

Within fifteen days of the date of this order, Respondent shall serve and file the affidavit required by Rule 30, RLDE. Should Respondent fail to timely file the required affidavit, he may be held in civil and/or criminal contempt of this Court as provided by Rule 30, RLDE.

s/Donald W. Beatty C. J.

FOR THE COURT

Columbia, South Carolina
September 7, 2017

There must be no tolerance for the US Trustee to side with wrong doings. Once I called them out on wrong doings reference using a magistrate judge to sign off on Chapter 11 cases I became enemy number one. That is what is behind Linda's inactions and have led to all this injustice.

I am entitled to have the clean hands of justice prevail against me or for me. The principle point is Clean Hands. Fairness can be measured and all looking at Linda Barr's behavior recognize she is seriously lacking in this area. Her judgment is impaired and it negatively reflects on your office and on the responsibilities she is sworn to uphold. Recommend immediate suspension until investigation done into when she knew the properties had equity and what is her explanation for letting Nelson and SC Community Bank's fraud sham this Court?

The mission of the United States Trustee Program is to promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders – debtors, creditors, and the public.

U.S. Trustee Program Vision

The United States Trustee Program carries out its enforcement, regulatory, and administrative responsibilities to enhance the integrity, efficiency, and operational excellence of the bankruptcy system for the benefit of all stakeholders – debtors, creditors, and the public.

U.S. Trustee Program Core Values

Integrity. We will be professional and adhere to the highest ethical standards.

Fairness. We will be impartial and honest in faithfully performing our statutory duties and responsibilities.

Respect. We will treat others with dignity.

Excellence. We will enhance the effectiveness and efficiency of our service.

Accountability. We will continuously measure and improve our performance and results.

U.S. Trustee Program Goals

Protect the integrity of the Nation's bankruptcy system.

Promote effectiveness and efficiency within the Nation's bankruptcy system.

Maintain operational excellence that achieves desired results through continuous improvements in field operations, administration, information technology, planning and evaluation, and diversity

Again, I believe there is a concerted collaboration of Nelson and Linda to agree on cases to get confirmed and others to be dismissed. I'm not sure how high this goes but that too need investigation. A systematic corruption of picking and choosing cases they feel worthy of confirmation while she being cloaked by her position for protection to not have ramifications for injustice.

Lastly, she lied at our initial meeting which is on the record. She said she wanted our case to succeed and all along she at every opportunity did knowing but harm me. Knowing your adversary is very valuable and she is this Courts adversary for unjust dealings with debtors. Now that these facts are revealed it is my earnest hope that they be corrected and a clear message sent to all that:

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IN RE:	) Case No. 14-05589-DD
	) Chapter 11
GARY ALLEN WASHINGTON and	)
MICHELE ANNE WASHINGTON,	) 1100 Laurel Street
	) Columbia, South Carolina 29201
Debtors.	)
	) September 16, 2015
	) 10:30 a.m.

TRANSCRIPT OF APPLICATION FOR COMPENSATION, FOR JONATHAN L. DAVIS, ATTORNEY (5/28/2014 TO 4/23/2015) (DOC. 89)
BEFORE HONORABLE DAVID R. DUNCAN
UNITED STATES CHIEF BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors:	The Cooper Law Firm By: ROBERT H. COOPER 3523 Pelham Road, Suite B Greenville, South Carolina 29615
For Applicant, Jonathan Davis:	JONATHAN L. DAVIS, ESQ. P.O. Box 746 Blythewood, South Carolina 29016
For the U.S. Trustee:	Office of The United States Trustee By: LINDA K. BARR, ESQ. 1835 Assembly Street Suite 953 Columbia, South Carolina 29201
TRANSCRIPTION SERVICE:	**TRANSCRIPTS PLUS, INC.** **435 Riverview Circle** **New Hope, Pennsylvania 18938** **Telephone: 215-862-1115** **Facsimile: 215-862-6639** **e-mail CourtTranscripts@aol.com**

Proceedings recorded by electronic sound recording, transcript Produced by transcription service.

THE COURT: On the 10:30 calendar today, Gary Allen and Michele Anne Washington, 14-5589, an application for compensation by Jonathan Davis. If I could have appearances, beginning with the applicant, please.

MR. DAVIS: Jonathan Davis, Your Honor, on my behalf.

MS. BARR: Good morning, Your Honor. Linda Barr representing the United States Trustee.

MR. COOPER: Robert Cooper for the debtors in possession, Your Honor.

THE COURT: All right. Mr. Davis, you filed an application for compensation. There were objections filed by the United States Trustee. Your notice of the hearing set a deadline for September the 8th for objections.

Mr. Cooper, who had previously asked for disgorgement of all of your fees, subsequent to that date joined in the U.S. Trustee's motion, but had objected to your fees generally by previously requesting disgorgement.

The United States Trustee's objection goes to a number of technical kinds of issues about your application and about the description of services that you provided in this case, and the adequacy of that description.

Have you had an opportunity to discuss those objections with either of the parties? And do you have any resolution of any of these issues?

MR. DAVIS: I don't have a specific resolution, Your

Honor. I've discussed it briefly with the U.S. Trustee.

I would like to point out several things to the Court:

One, the actual contract that we signed was only for $9,000. It wasn't originally -- it was originally scratched out on my Chapter 13 application as written in Chapter 11, and it just said $9,000. That's what I thought at the time would be a flat rate. I don't have any -- any problem with reducing it to $9,000.

It didn't mention expenses. I don't have any problem with not paying for the expenses.

In response to the U.S. Trustee's objection, I would point out to the Court that any time it says "receipt and review of e-mails," those were e-mails from Mr. Washington. Otherwise, it says e-mails from the United States Trustee's Office, or from anybody else that it might have been.

I'd also point out to the Court that the majority of those are the minimal recording of a tenth of an hour. I've tried to be very minimal. I didn't put any time in for any telephone calls or anything that I didn't have any documentation of as I didn't want to be wrong in what I was putting in.

I don't actually anticipate getting any more funds if the Court finds that I am entitled to the funds I've already gotten.

So I honestly don't have any problem with the Court reducing it just to that. I --

THE COURT: How much money do you still have on-hand?

MR. DAVIS: Forty-five -- sorry.

(Pause)

MR. DAVIS: It was in my -- I thought it was in -- forty -- forty-five hundred and thirty-three dollars.

THE COURT: Thirty-two?

MR. DAVIS: Thirty-three.

THE COURT: Thirty-three.

MR. DAVIS: Yes, sir.

THE COURT: And the only thing that you had paid from your --

MR. DAVIS: I haven't paid anything out of that.

THE COURT: -- funds --

MR. DAVIS: That's all --

THE COURT: You paid the filing fee?

MR. DAVIS: That was not counting the -- he paid the filing fee in addition to the forty-five thirty-three.

THE COURT: All right.

MR. DAVIS: The forty-five thirty-three was --

THE COURT: And that's the only distribution you've made from those funds?

MR. DAVIS: Yes, sir, right.

THE COURT: Let me ask you some questions. In your

fee application, the -- you request payment for services of 5.75 hours through October the 2nd. The petition was filed on October the 3rd.

So when you filed the bankruptcy petition, you were a creditor of the debtor, is that correct?

MR. DAVIS: I had not thought of it in that manner, Your Honor. But I suppose minimally, I was.

THE COURT: You did not pay yourself at the time you filed the petition for prepetition services --

MR. DAVIS: No, sir.

THE COURT: -- as is the practice of most Chapter 11 counsel so that they don't have that problem.

MR. DAVIS: I did not.

THE COURT: Okay. Then after that, you filed your application to employ -- to be employed as counsel on November the 14th. Under our local rule, your employment in the case is effective on the date that your application is filed.

In addition to the 5.75 hours that were prepetition -- prepetition services, there are another 21 hours that were worked post petition, but prior to the filing of your application. Is there any reason that the Court should deviate from its usual rule that your employment is effective on filing of the application, and that any services before that, unless approved nunc pro tunc, are not compensated?

MR. DAVIS: Your Honor, this is my first effort to

filing Chapter 11, if the Court might take that into consideration before -- it certainly doesn't have to.

THE COURT: But you're familiar --

MR. DAVIS: If -- if the Court considers none of that, I believe that the hours after that that I put in still would constitute enough to -- that I would be due the money that I've already received.

THE COURT: All right.

MR. DAVIS: So if the Court chose to ignore that, it probably wouldn't effect me at all.

THE COURT: So that brings me to November the 14th when you filed your application. And if I begin my consideration there, you referenced a part of the United States Trustee's objection to your application in that there is little information in the description of services. There are references to reviewing e-mails/case information. The sender of the e-mail is not identified. You had indicated that all of these references are to --

MR. DAVIS: All the --

THE COURT: -- Mr. Washington unless --

MR. DAVIS: Unless --

THE COURT: -- the U.S. Trustee's Office is referenced.

MR. DAVIS: Or some other party, yes, sir.

THE COURT: But there's no description of the subject

matter for any of these e-mails. With respect to the proofs of claim reviews, there's no indication as to which proof of claim was reviewed.

And beyond that, there are descriptions that I think are sufficient if I compare the docket and your application so that I can understand what your services were. For example, on December the 9th, you have receipt and review of motion for relief from stay. There would be a motion for relief from stay that was pending that had been served on you at that point in time.

So with respect to some of those basic issues, and then the hearings that were held in court, and your preparation of amended schedules, other pleadings, if -- if I discount all of these time entries generally for receipt and review of e-mails that don't tell me anything about the service, and if I discount all of the proof of claim reviews that don't indicate which claim was reviewed, or what the contents of e-mails with opposing counsel -- what those were about, I'm left with just a few hours. I haven't added them up, but --

MR. DAVIS: Your Honor, I'll apologize if --

THE COURT: -- it's not many.

MR. DAVIS: -- they're vague. I looked off a previous application for fees and tried to make my application comparable to the previous application for fees in a prior case that the Washingtons had filed. So I --

THE COURT: If --

MR. DAVIS: -- thought it was a sufficient application.

THE COURT: Well, it drew the objection of the U.S. Trustee, and also Mr. Cooper.

MR. DAVIS: Well --

THE COURT: So at least they don't believe that it's sufficient, right?

MR. DAVIS: Now if -- you've asked for a total of 56.45 hours. You've indicated that you understand that your own contract might constrain you from being compensated for that many hours, and then we have 20 -- 26, almost 27 hours that are before you were employed in the case.

So we -- if you take out all of the e-mails, we're down to something less than 18, 20 hours that we're talking about here.

If I focus just on those 18 to 20 hours, tell me the benefit that you brought to this case by those services.

MR. DAVIS: Your Honor --

THE COURT: Why is this case better as a result of your services in the case?

MR. DAVIS: I filed the case to prevent the immediate foreclosure of the building. Mr. Washington was able to go ahead and work for several months with his government contracts and earn income as a result of not losing the building at that

time.

Mr. Washington gained rental income, I'm told, throughout the period of time that he did not lose that building.

I worked to try -- some of the things that I've tried to do for Mr. Washington were unsuccessful. I -- I believe that his stay ultimately benefitted from having -- from having more income during the pendency of the case.

THE COURT: So you --

MR. DAVIS: My understanding is that --

THE COURT: I don't want to put words in your mouth, but you're telling me that you -- you bought Mr. Washington some time.

MR. DAVIS: That -- to me, that ultimately seems the -- I mean without having necessarily a better idea of the definition of benefit as --

THE COURT: Well, the purpose of the Chapter 11 is to rehabilitate a debtor, or to reorganize the business affairs of the debtor.

If that's the purpose, what benefit did you bring, other than some time in which that could have happened, although it didn't happen?

MR. DAVIS: It's my belief that it could have happened if things would have been different. I mean I do believe that I benefitted the estate by allowing the

continuation of real income, the continuation of -- of government contracts to Mr. Washington, those he would lose if he didn't have the building. So all of that time spent was a benefit to the estate. Ultimately --

THE COURT: When you say "to the estate," Mr. Washington received --

MR. DAVIS: The debtor in possession.

THE COURT: -- received income.

MR. DAVIS: Right.

THE COURT: And it's not clear to me that it was actually paid out to creditors. So, Mr. Washington -- Mr. Washington might have received some personal benefit by additional time in terms of having money flow to them. But was there any progress toward reorganizing their financing affairs, other than trying to fend off the efforts --

MR. DAVIS: There was --

THE COURT: -- of foreclosure on the Gervais Street property?

MR. DAVIS: I believe there was progress, and that progress was hindered, and then I was removed from the case before I could try to finish rehabilitating the --

THE COURT: What would you have done if you had not been removed from the case at that point? What was your game plan or strategy?

MR. DAVIS: At that point, I think the best thing for

the estate might have possibly been a Chapter 7 given the --

THE COURT: Would you not -- would you not sort of concede that at that point in time, the relationship between you and the Washingtons was irretrievably broken?

MR. DAVIS: At the time, I was not certain that it was. However, given Mr. Washington's pro se filing of the motion to relieve me, I suppose it was irretrievably broken at that time.

THE COURT: Tell me why the fact that you were a creditor on the date of filing the case should not disqualify you from any fees.

MR. DAVIS: Your Honor, as --

THE COURT: Are you familiar with that line of cases that indicates that that's the result of being a creditor in a case? You -- under the Code, you have to be disinterested. Being a creditor is not being disinterested.

MR. DAVIS: Your Honor, certainly if I were familiar with that line of cases, I would have paid myself out of fees available. I didn't do it out of any effort to manipulate anything. I just don't have any experience with a Chapter 11 generally speaking.

THE COURT: Now in your application that comes later, you represent that you do have significant --

MR. DAVIS: I just -- only -- only bankruptcy experience in the application, Your Honor.

THE COURT: -- significant bankruptcy experience, right?

MR. DAVIS: But as opposed to other applications for being paid -- for employment where they said "significant Chapter 11 experience," I've omitted the Chapter 11 purposefully as not to be misleading. I don't -- this is obviously my first Chapter 11, as anyone could tell.

THE COURT: I have -- those are the preliminary questions that I wanted to ask you. Do you have any evidence that you would like to present today concerning the reasonableness and the justification for your fee?

MR. DAVIS: Nothing.

THE COURT: Other than the application and the statements that you've made?

MR. DAVIS: I would just reiterate that in my filling out the application, I tried to put as minimal amount of time as possible as might have been related to the documents that I reviewed.

THE COURT: You spent more time on the case than is reflected here.

MR. DAVIS: Yes, Your Honor. I --

THE COURT: Okay. But -- but --

MR. DAVIS: I didn't list anything for telephone calls or anything like that. I -- I believe that it's an honest representation of the time I spent on the items that I

did list. And that's --

THE COURT: So --

MR. DAVIS: -- about it.

THE COURT: So no evidence that you want to present.

MR. DAVIS: No, sir.

THE COURT: Okay. Ms. Barr, would you like to examine the applicant with respect to any of the matters in your objection? Or do you have any statements you'd like to make to the Ccurt?

MS. BARR: Your Honor, just statements.

THE COURT: All right.

MS. BARR: I don't -- as we said in our objection, there is no question that it doesn't provide the information that we're used to seeing in a fee application in a Chapter 11.

I do concede with Mr. Davis, when I look at his time entries, they appear to be minimal. Point one indicating five minutes on something when I would anticipate it's going to be at least five minutes for whatever that activity was.

But it wasn't reported contemporaneously, so there is a certain -- I guess -- just guessing that goes into that. And I understand Mr. Davis's position that he says well, I've actually even done more work than that, and this is really more just a minimal, even if I guessed wrong, I guessed low rather than high.

As far as his descriptions in the case, if -- if this

was a case that I was looking at, whether 50,000 in fees or 55,000 in fees, descriptions get very, very important there. Is there a duplication of services? Were they doing something that was more administrative? Were they re-looking at something they hadn't looked at earlier on?

In this particular case, we were talking about a much smaller amount of money and a much shorter period in the case itself.

And so candidly whenever we were looking at this fee application, we looked more just to the general case itself, the entries that appeared on the docket, the appearances that we knew occurred in court rather than holding him necessarily to the standards that could be required.

I will also say our office does not always impose all of the UST guidelines on fee applications. There are other attorneys that also, depending on if they only file one fee application, or how big the case is, they don't do project billing, they don't do some other things that are required. It's more do we have a sense of the case?

In this particular case, I do have difficulties in that I don't necessarily understand what the agreement was between the debtor and Mr. Davis.

I did request a copy of the retainer agreement. Mr. Davis does not have it. Whether it's in the original file, whether it was lost, I don't know which one. So when I hear

that there's a 9,000 it then, of course, brings to my mind, was this a flat fee case, which clearly wasn't noticed at the beginning of the case.

When I look at the application which was filed on November the 14th, 2014, what he states in there is that there is an agreement between the parties that he'll do $200 per hour.

I did attend the prior hearing on the motion for disgorgement. And it appeared to me, at least from Mr. Washington's statements, that it was more of a per hour rather than a flat fee. And $9,000 was never remitted to Mr. Davis anyway.

I will say I understand Your Honor's point about whenever they're entitled to fees. I can say that it's common that we see that fee application -- or applications to be employed are not filed with until probably 30 days into the case. And typically we do let them relate back to whenever they first filed the case.

In this particular case, Mr. Davis filed 11 days after the 30-day, which is the typical deadline. We did not hold him to the standard of making him go through a nunc pro tunc. Instead, we just didn't object to the application, and he was approved.

So, again, when I'm looking at his fees, I have looked at it from the beginning of the case. I looked at that

he did come to the first meeting of creditors. I looked at the schedules were filed. I looked at the amendments that requested that were made.

When I look at the benefit to the estate, had the settlement negotiations that were originally reached between the debtor and the bank not fallen through, we might be in a different position. We may not even be here today had that occurred.

Unfortunately, we weren't there. In the meantime, knowing Mr. Washington, he has continued to negotiation new contracts. I know improvements were made on his building, which I think was going to allow him to rent additional space. So there was some time to allow some things to occur.

I also, though, cannot ignore where I'm at right now in this case. And that is even with new counsel, we still don't have a plan and disclosure statement. I filed a motion to dismiss this case yesterday. And so I'm not sure that the outcome would be any different depending on which counsel had been in place.

Is Mr. Davis inexperienced in Chapter 11s? Absolutely. I think he's been very honest about that.

Some of the things that I saw him do in this case, though, are not unusual from what I see with other debtor's counsel. It's not unusual for there to be amendments to schedules and statements after a first meeting. Inevitably we

always seem to ask some question that wasn't asked somewhere.

It is not unusual for us to have to remind people to file an application to be employed.

It is not unusual for us to find out that there's some prepetition amounts that were due that they did not disclose. And typically how that gets resolved -- and I suspect had I been more aware of it, Mr. Davis would have agreed, they just waive them. And so they're no longer a creditor. And given the amount of hours that were involved in this, I suspect Mr. Davis would have been there.

Does that mean that the errors should be ignored? I'm not saying that they should be. And, in fact, we requested that there is a reduction in the fees.

Does it mean that he should be not entitled to any fees? I have a hard time taking that decision.

Even under Your Honor's analysis, if he had 20 hours that were still acceptable hours, that would put him at about $4,100, $4,500.

So from our perspective, we would ask for you to do a reduction. But we do think he's entitled to something.

THE COURT: And do you think that a reasonable fee in this case would be in line with what he holds as a retainer now, four or $5,000?

MS. BARR: Your Honor, I believe he's -- 20 hours worth of work that we can comfortably say were done, which

would put you at that amount, yes.

THE COURT: While you're standing: I recall from the previous hearing that when we were focused on issues relating to the strategy in this case, specifically the strategy with respect to the motion for relief from stay, and the discussion was concerning Mr. Washington's indication that he was, all along, directing Mr. Davis to pursue a higher value for the property so that we didn't have the problem that we ran into with the motion for relief from stay, no equity and issues about reorganization. You corrected Mr. Washington to remind him that at the meeting of creditors, he had urged the lower value for the property as being the appropriate benchmark where the case ought to go forward.

I suppose, with a view of valuing the property at that lower dollar amount, and paying for that, am I recalling all of that correct and remembering the purpose for which you interjected yourself at that time?

MS. BARR: Your Honor, you are correct that the purpose of my interjecting is that it was very clear to me that the schedules and statements had been reviewed by Mr. Washington, and that was his testimony at the first meeting.

Part of those schedules and statements was that there is the valuation of $306,000 for that property. And I did ask him about that lower value because it had been valued higher at a prior case. And he had indicated that a lower value was

appropriate because there were some repairs that needed to be done, and other things.

And so in -- and I guess I have the advantage of I don't have to disregard certain evidence if it doesn't come in correctly. But, you know, some of the e-mails that were used at that hearing that I sat in seemed to indicate that he did want the lower value.

So from -- again, from my perspective where I don't have to have any final decision, there were indicators to us, at least, that a lower value is something that the debtor was supporting, and that wasn't just something that Mr. Davis made up.

THE COURT: Thank you. I appreciate, as always, the U.S. Trustee's efforts to monitor these matters, and focus that you place on compensation issues when it's appropriate for you to do so and when you decided that that's an issue that needs to be addressed.

MS. BARR: Thank you, Your Honor.

THE COURT: So thank you.

Mr. Cooper, do you have questions that you would like to ask of Mr. Davis? Or do you have statements that you would like to make with respect to the application and your objection to it?

MR. COOPER: Your Honor, I don't have any questions. I think we pretty much beat it to death at the last hearing on

August 13th, and we renew all of our objections to any fees whatsoever.

I want to point out during the discussions this morning that you noticed something that I had noticed, as well. That Mr. Davis was a creditor. He did not state that in his application to be employed as the debtor's counsel. He states in his fee application that -- or accounting that he was owed some money prior to the filing of the bankruptcy. I think that makes him not a disinterested person under 101-31, and that he would not be able to be debtor's counsel.

The accounting that he put together really doesn't say anything. I'm not going to go through the seven factors that the U.S. Trustee needs to determine whether or not the services benefitted the estate were reasonable and so forth. I'm just going to reiterate our objection that Mr. Davis receive any fees whatsoever in this case.

THE COURT: Mr. Davis, any -- Mr. Davis, anything as a final statement from you regarding this matter?

MR. DAVIS: No, sir, Your Honor.

THE COURT: No? All right.

As -- as you are all aware, I have deferred a decision on the debtor's motion to disgorge and sanction Mr. Davis. Although I had heard that matter, I did so for two reasons:

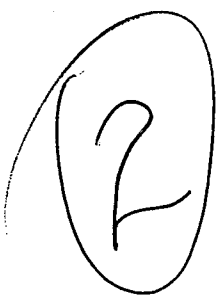
The initial reason was that Mr. Cooper asked for an

additional ten days so that the Washingtons could get some information about the effect of the possibility that I might award some fees in the case on an action that I understood they were contemplating for professional negligence. And I did not, within that ten-day period, get any request not to rule.

About that time, Mr. Davis then filed his application, which should have, long ago, been filed. And which might have led us in a different direction in the case.

So once that application was filed, I entered just a short order indicating that I would -- would further continue to hold in abeyance my ruling on the disgorgement and sanction issue. And that if there were objections to the application, that I would hear those, and then rule on all the matters together, and that's where we are today.

I don't even know where to begin. It's an unfortunate place where we find ourselves with respect to this case.



I think, Mr. Davis, you clearly were not equipped to handle a Chapter 11 case. You, at the time, did not even have software to generate the basic schedules that were necessary. And throughout the case, it's been clear that you've had to be prompted by the U.S. Trustee to do even the most basic things. The U.S. Trustee points out that that happens in many cases. Perhaps it's an even sadder commentary on all of the practice that the U.S. Trustee finds themselves doing that with lawyers

who regularly practice in Chapter 11 matters.

Nonetheless, none of those matters are before me today, only your issue is.

Despite the fact that I believe you were not ready to handle on your own a Chapter 11 bankruptcy case, one especially that was a third filing, and that had a history of some issues between the debtor and the Washingtons, and in which it should have been abundantly clear that there were complicated issues that would have to be addressed with respect to commercial real property, you belatedly filed an application for your employment which -- which, at minimum, puffs your abilities. And if you took the original form, and just deleted out Chapter 11 experience, is, frankly, even misleading to the Court when you use a form and then just take out a word or two, and send it along its way. I don't think you intended that.

I think you intended to help some people who were probably near the end of their ropes with respect to some financial issues. And lawyers sometimes take on things that they shouldn't take on because they think they're quick learners, they think they can master a subject area, especially when they know something about related matters, consumer bankruptcy cases. But I will tell you from my perspective at the bench, that's a huge mistake for lawyers to make. To think that they can just transition into Chapter 11 work from the consumer work without significant study or help, and mostly

help.

I do think that Mr. Washington, now extremely dissatisfied with his -- with the results in this case, overstates what he thought about your representation of your experience. I think he knew that you didn't have a lot of experience. He had been in Chapter 11 before. The fact that you weren't telling him about a lot of the things that he knew he had to do in previous cases, I think, tells me something. And the fact that you didn't even have the software to generate the schedules, something he concedes he knew, was a warning to him, as well.

While I know that in the breach, parties don't object to the fact that the law provides that if you're a creditor in a bankruptcy case, you are not disinterested, you can't be employed. And I know that slides by the wayside often. It's still the law.

If I, as I try not to do, but if I disregard that, there's still the issue that for six weeks or so, you didn't even try to employ yourself. And the fact that others make that same mistake doesn't help you out with me nearly as much as it might with the U.S. Trustee.

Our rule was carefully constructed to allow counsel to file an ex parte application, along with the other papers commencing a case. Under a later national rule change, that application doesn't get dealt with until later. But

nonetheless, our local rule applies it backward to the date it was filed. And it is with peril that someone ignores that local rule.

Your application doesn't give me the information I need to make a decision about the reasonableness of the fees in the case. There aren't descriptions of what you did, who you did it for, and who you were talking to throughout the case.

On top of that, we have the ranker that comes along with an application to disgorge all of your fees and a contentious dispute between you and Mr. Washington, now represented by Mr. Cooper, over whether you just blew this case all to pieces, and a request to disgorge your fees, and sanction you because of that.

I could, frankly, write as many pages about this, and have the findings of fact that would go on, and on, and on. And I think probably both sides would not like how I characterized what occurred in this case. But I think those characterizations would be fair and accurate.

I don't have a desire to write an order that attacks people's credibility. And I don't have any desire to write an order and publish it that attacks the professional competence of a member of the bar.

The easy way for me to deal with this is simply just to fall back on the basic case law, which is you're a creditor and you don't get paid, and you have to turn over all of your

fees that are left to the Washingtons because you haven't justified being paid at all because you were not disinterested and you're not a creditor.

I don't know that that puts an end to this case. The Washingtons may well pursue you for professional negligence. I'm not going to do anything here today that might be construed as making the findings of fact that might come up in such a case.

I'm simply going to rule that you were a creditor, that your application is deficient, that you failed to follow the local rule with respect to these matters, and that while you did perform services in the case, at least in some part, consistent with the initial thoughts of your clients about the goals of the case, that you are not entitled to any fees in the case.

And I am going to direct you to turn over those funds to Mr. and Ms. Washington, or to turn them over as they might direct you.

That resolves the disgorgement issue. I am not going to award sanctions in this case. In doing so -- in so ruling, that does not go to the issue of any professional negligence, or anything else that might be involved. But I'm -- I'm not going to sanction you in connection with this.

I'm going to enter a fairly short order to that effect. If the parties choose to appeal that order, I'm -- my

expectation is the first thing the Appellate Court's going to do is remand it back to me for findings of fact, and I'm going to give them findings of fact. So do that -- with that what you want.

That's the -- that's the order of the Court. And we will be in recess until 2 o'clock this afternoon when I have other matters on the calendar.

Thank you very much.

(Whereupon, at 11:14 a.m., the hearing was adjourned.)

CERTIFICATE OF TRANSCRIBER

I, KAREN HARTMANN, a certified Electronic Court Transcriber, certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



Karen Hartmann, AAERT CET**D0475 Date: December 18, 2015
TRANSCRIPTS PLUS, INC.

Attach

B

Gary Washington
1324 Furman Drive
Sumter, SC 29154

January 8, 2018

Representative Wendy C. Brawley
309D Blatt Bldg.
Columbia, SC 29201

Hello Rep Brawley:

Congrats again on your election. I call on you because of your positive tenacity and your continued legacy of Representative Joe Neal, our friend.

We request a letter of support for an investigation into the unethical conduct of the United States Trustee Linda Barr.

We have come into some difficulty and I have attached the documents that explain better. After you review the information I ask for your assistance and involvement into our request for a formal investigation into the unethical conduct of United States Trustee (UST) Linda Barr. There is no judicial immunity from a UST being investigated and prosecuted for crimes against the Court and a debtor.

We believe Attorney Barr was acting outside of her scope of duties. We were not asking for her to be on our side but to be fair. This case would have been confirmed had not Linda blocked us from time to confirm case and the "equity issue" which was adequate protection for the creditor, South Carolina Community Bank. We believe that she stood by unfairly and helped the Bank deceive the Court on the equity issue which is the first prong of confirmation for a chapter 11 case. This is our express legal basis for reversal of the decision by the Court should the investigation reveal what we believe have taken place.

Joe was part of the success of Carolina Encouragement Center located at 1811 & 1815 Gervais Street, Columbia, SC 29201, (Richland County) a property used for public business training owned by myself and wife, Michele Washington. Many businesses got their start through our procurement efforts, leasing of office space and business infrastructure training.

It was the home of the business incubator for Women and Minority Small Owned Businesses across this State owned and operated by a business person. This is the property that Linda assisted the Bank by defrauding the Court in order for them to possess. The property is held up as it is litigation by Attorney Pyatt on our behalf.

An investigation request does not place you in any legal issue but a party to voice a concern for justice. We will stand by the outcome of an outside investigation agency abreast of complex banking fraud, bankruptcy and trustee responsibilities proceedings.

A letter of support from you would assist, already working, Tim Scott's Office on our behalf. We only ask for justice and fraud to be dealt with through the law.

I can be contacted at 803 238-4542 cell or gawcpi@att.net.

Sincerely Appreciate You,

Gary Washington, Director
Carolina Encouragement Center

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Gary A. Washington	§	
	§	Civil Action No. 3:10-3061-CMC-JRM
Michelle A. Washington	§	
	§	Bankruptcy Appeal
vs.	§	
	§	
United States Trustee	§	

APPELLANTS' OBJECTION TO MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Come Now, Debtors and Appellants Washington, and file the following objections to the Magistrate Judge's Report and Recommendations:

1. The District Court may not refer a bankruptcy appeal to a magistrate judge because many courts hold that Section 158 of Title 28 requires that the appeal be heard only by district judges or bankruptcy judges sitting as a bankruptcy appellate panel service. The Federal Rules of Bankruptcy Procedure do not make a provision for a District Court using magistrate judges in a bankruptcy appeal. Additionally, Appellants believe that Article III of the United States Constitution requires that a final judgment only be issued by a judge who is appointed for life especially in light of the United States Supreme Court decision in *Stern v. Marshall* on June 23, 2011. Not only would it be improper to refer a case to a magistrate judge because of this but the bankruptcy judge should not have issued a final decision in the first place. Appellants object to the Report as a whole on this basis.

2. Paragraph 1 of the Report concludes that sound reasons were given for and the dismissal was a valid exercise of discretion. Debtors dispute this as their income was increasing and they were in the process of a turn-around.

3. Paragraph 3 of the Report concludes that evidence supported the late filing of a plan without cause. Debtors dispute this that they acted reasonably were taking care of their case properly.

4. In the Conclusion, Paragraphs 10 and 11 of the Report the Magistrate Judge concludes that the Bankruptcy Court was basing its ruling on the evidence and not on speculation. Debtors take issue with this finding as Debtors contend the decision to dismiss the case was in fact based on speculation rather than the evidence.

Respectfully Submitted,

9/8/11
Date

Gary A. Washington
Michelle A. Washington
Appellants Pro-Se
1324 Furman Drive
Sumter, SC 29154-1420
(803) 238-4542

CERTIFICATE OF SERVICE

I certify that I have or am contemporaneously serving a copy of this document on the entities listed below either by first class mail if their address is listed or if no address is listed through the Clerk by electronic mail.

Any entities receiving electronic court notices.

FILED
2010 OCT 15 PM 12:48
U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

In Re:	Gary A. Washington	§
		§ Bankruptcy Case No. 09-08248-DD
	Michelle A. Washington	§
		§ Chapter 11
	Debtors.	§

APPELLANTS' STATEMENT OF ISSUES ON APPEAL

Come Now, Debtors and Appellants Washington, and file this Statement of Issues on Appeal pursuant to F.R.B.P. 8006:

1. Whether the Bankruptcy Court had the discretion to dismiss the case under Section 1112(b) or otherwise given the circumstances of this case.
2. Whether Section 1112(b) of the Bankruptcy Code is the exclusive means by which a Chapter 11 case can be dismissed.
3. Assuming *arguendo* that the Court had the discretion to dismiss the case whether the Court abused its discretion in dismissing the case given the circumstances present here.

Respectfully Submitted,

10/15/10
Date

Gary A. Washington
Michelle A. Washington
Appellants Pro-Se
1324 Furman Drive
Sumter, SC 29154-1420
(803) 238-4542

CERTIFICATE OF SERVICE

I certify that I have or am contemporaneously serving a copy of this document on the entities listed below either by first class mail if their address is listed or if no address is listed through the Clerk by electronic mail.

Any entities receiving electronic court notices.

10/15/10
Date

Gary A. Washington

Attach

C

From:

Mr. Gary Washington, Owner
Gervais Professional Suites, PA
2917 River Drive
Columbia, SC 29201

March 5, 2018

TO:

Supreme Court of South Carolina
Daniel E. Shearouse
Clerk of Court
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29201

The Banking Commission
Robert L. Davis and Kathy L. Bickham
Commissioner of Banking and Assistant, respectfully
1205 Pendleton Street, Suite 305
Columbia, SC 29201

SC Attorney Office
Wells Fargo Building
1441 Main Street Suite 500
Columbia, SC 29201

Subject: Submission to the Supreme Court to remove Leslie Coggiola, Director of SC Supreme Court Disciplinary Counsel, an order an investigation into my dismissed case based on fraud against the Court by United States Trustee Linda Barr, South Carolina Community Bank and Richardson & Plowden Law Firm. There are Regulatory Violations by the Bank and Public Corruption

We have a bank, South Carolina Community Bank that has certainly committed fraud against our company, the Court and it involves commercial property, appraisal equity and Chapter 11 Bankruptcy cases. These cases are steeped in Public Corruption to steal property for University of South Carolina and South Carolina Community Bank in order to build a parking garage. These cases are steeped in Public Corruption and must be considered together in order that the fraud and Bankruptcy Court's vendetta are revealed.

Thus far we have managed to get one attorney's law license suspended, Attorney John Davis, pending an investigation by the South Carolina Supreme Court Disciplinary Counsel. The property has over 250k and USC wants to purchase it from the bank.

The unethical conduct of Leslie Coggiola is consistently damaging. She has demonstrated subjective decision making instead of objective decision making based on the facts of our five complaint packages against United States Trustee Linda Barr. Basically the United States Trustee ignored our civil rights as did Leslie Coggiola while exercising a vendetta against us and assisting in fraud against the Court in order to dismiss our chapter 11 case before Judge Duncan. He too is part of the problem in getting a fair ruling based upon the bankruptcy law as he has helped orchestrated this injustice with Linda.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Trustee of Bwn
1825 Adsem Sly St
Columbia, SC
29201

COMPLETE THIS SECTION ON DELIVERY

A. Signature
x Barbara Smith
☐ Agent
☒ Addressee

B. Received by (Printed Name) Barbara Smith
C. Date of Delivery 2-25-15

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

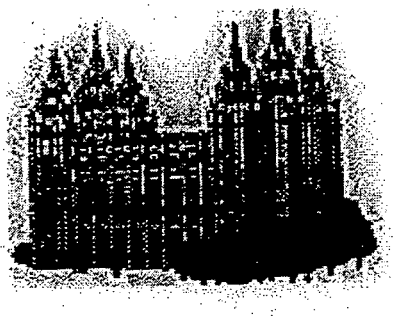
FEB 25 2015

3. Service Type
☐ Certified Mail® ☐ Priority Mail Express™
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ Collect on Delivery

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7011 1570 0001 0584 4901

PS Form 3811, July 2013 Domestic Return Receipt



Carolina Procurement Institute, Inc.

Carolina Procurement Institute, Inc.
Mr. Gary Washington, President
1815 Gervais Street
Columbia, SC 29201
gawcpi@att.net

February 24, 2015

Trustee Linda K. Barr
Office of the US Trustee
Strom Thurmond Federal Building
1835 Assembly Street
Columbia, SC 29201

Dear Trustee Barr:

I am currently represented by an attorney in my bankruptcy case, but you said repeatedly in a previous meeting with me and my wife, Michele, a retired Air Force Reserve Veteran, that you wanted to see our success in this filing. My attorney, John Davis, had a hearing before Honorable Judge David Duncan without my presence. I believe that Judge Duncan is again in error in regards to determining that I have no equity in my buildings. (See Attachment "Gary's Case," which Substantiates Market Value.) The authority is Richland County Assessor's Office "Title 12, Article 25, Section 12-37-3140." which determines Fair Market Value. More specific, letters dated June 17, 2014 describe the appraised market value of properties at 1815 and 1811 Gervais Street as $258,500 and $162,800, respectively, totaling **$421,000**, which is the current market value. This information directly eradicates the material error of Attorney John Davis and Attorney Nelson Weston, Jr. Their material error caused Judge Duncan to come to a false conclusion. Attorney Davis and Attorney Weston used $306,300, which is only the taxable value of 1815 and 1811 Gervais Street to determine market value. The use of this figure is incorrect for the market value.

(See "Gary's Case," file 01/21/15 Page 4 of 37 and Page 10 of 37) of Attorney Weston's motion, which is wrongfully prepared. The equity is determined by what is owed to the creditor, South Carolina Community Bank, (See "Gary's Case, Audit dated 12/26/14 prepared by the bank,") less the market value equals equity. The above bank says I owe $340,455.55 on Loan Account Number 125096. This amount subtracted from $421,000 (market value), equals $80,844.45, which is the equity amount in the facilities. This information cancels "362D Motion" that states there is no equity in the facilities, per Judge Duncan's ruling.

The action that this misinformation is causing has to be stopped, like we did before. I am asking that you please review the recent decision that Judge Duncan made that says I have no equity in my buildings. All taxes are paid in full.

Be clear, this is much more than two office buildings in the heart of Downtown Columbia, SC. It is our family's sweat equity for over 16 years and our generational wealth that the Judge, SC Carolina Community Bank and Nelson Weston are now trying to steal away.

You, your previous boss, and Attorney Reid Smith, did right. I complied for two full years after my bankruptcy confirmation. The opportunity to restructure my company proved to be the right choice. Initially, my case was denied by Judge Duncan which led me to appeal his decision. (See attachment "Appeal Objection.") As a reminder, you along with your boss and Attorney Smith created stipulations for me to withdraw my appeal. (See Attachments "Reconsideration Chapter 11 Issues with Investigation Request and "Stipulations Dismissing Appeal.") The approved stipulations were no different than the stipulations used to dismiss my case, except the withdrawal of my appeal against Judge Duncan. (See attachment "Order Resolving Motion to Dismiss Washington")

I am asking that you and Attorney Davis work together to provide Judge Duncan with factual and lawful information that shows I have equity in my buildings. The court system is supposed to work for the little guy by providing debtors with a fresh start and the reduction of claims in a fair and efficient forum dedicated to excellent public service. Attorney Davis is very new in handling Chapter 11 cases and has made a material error. He listed the taxable value of my property instead of the market value, which determines the amount of equity in the building. Attorney Davis can be contacted at (803) 782-1437. I believe everyone should have a clear shot at correcting this matter.

Having the law and the facts reviewed correctly before damages are done helps everyone; the bank, the court, my businesses and the 10 businesses located in the Gervais Professional Suites incubator.

If the judge has the law and facts and still moves forward and not reverses his decision then it is clear that it is retaliation for the appeal that I launched against his decision during my last bankruptcy case.

All parties could best be served by providing me the opportunity to perform the most recent agreed upon settlement which Attorney Davis put together in good faith with Attorney Charles Web. If this agreement is accepted it would become effective in 30 days and adequate payments would be made to the bank.

Thank you for your consideration. I can be contacted at (803) 238-4542.

Regards,

Gary A. Washington, President
Carolina Procurement Institute, Inc.

Attachments 6

1)Gary's Court Case (Several items)
2)Proof of Insurance and grant approval
3)Reconsideration Chapter 11 Issues with investigation request
4)Stipulation dismissing appeal
5)Order resolving motion to dismiss Washington
6)Appeal Objection that Slams Judge Duncan

Cc: Attorney John Davis
SC Community Bank – President, Tom Felder
Attorney Weston and Attorney Webb

Attach

D

To circumvent the legal system as these attorneys have done with no remorse or repentance is a dangerous thing. A slap on the risk or a temporary revocation does not measure the punishment that the deception of the foreclosure and eviction **(see attachment six, Eviction)** that caused twelve companies to lose everything and be placed on the street. This document is not for you to try and rectify a crime against us. That is not your office job. This eviction is placed before you to demonstrate the blatant aggressive attitude and mindset of Nelson Weston and Benjamin P. Calton, Esquire both of Richardson Plowden & Robinson, P.A. to cause harm at any cost while knowing stealing for the Bank. This is what Linda Barr was supposed to have stopped if she was doing her job. Her unethical misconduct in the pursuant of helping the Bank caused this crime to take place.

In order to have stolen our properties several people had to collude, forfeit their obligation of duty, lie and now cover up this case. The judge had to not do his job and sanction Davis (putting that on your office) to exclude the order of a new case, UST Barr had to vacate her responsibilities and commit unethical misconduct in order to prop up now Suspended John Davis while avoidance at every turn that "equity issue". Her willful failure to disclose fraud upon the Court makes her culpable. She objects to Cooper's Plan but not to the fraud on the Court. One thing is clear she was on the side of the creditor from the outset to the end. She permitted the bank to lie and have their attorneys commit fraud upon the Court to remove equity for the foreclosure and Master of Equity had to abdicate his responsibilities which are where we are at now. **See Attachment seven,** Appeal from Richland County Court of Common Please Case No 2016-CP-001468.

Linda Barr had a duty to disclose the facts of equity to the Court or at least dispute the Bank's position to the Court. She was blinded by the vendetta against us. The UST Judy A. Robbins also abdicated from her job by not ordering an investigation into the matter of equity but relied on Lying Linda and her boss that also signed off. **(See attachment eight, Reply letter to my Complaint to US Department of Justice, dated April 6, 2016.)**

It is sort of fascinating to witness the system work overtime to cover a crime that they themselves enact to the damage against us the tax payers. Once the ball gets rolling to cover a lie and misconduct no one wants to stand up and stop it. At least you have the facts and my case warrant your diligent involvement to include investigations, disbarments, request for resignations and recommendation for prosecutions.

At this point it would be a good avenue to have John Davis to testify as to what deal Nelson Weston and Linda made him that he threw my case. It is good leverage to get the overall scheme from a participant to offer him a lesser penalty. Again, this was a team effort.

Others must be made **AWARE** to beware of the potential ongoing corruption of Linda Barr and her office for the sake of their cases. Bankruptcy attorneys and their clients coming before the bankruptcy court is at a disadvantage not knowing of the ploys awaiting them that is built into the system against them because of the Linda Barr's holding the UST position.

We must bear accountability and the expectation of people fulfilling their duties. Promote institutional values to protect the public as a whole, please.

Gary Washington
803238-4542 cell

Attachments – Eight each

On Tue, Dec 15, 2015 at 8:41 PM,
rhcooper@thecooperlawfirm.com
<rhcooper@thecooperlawfirm.com> wrote:

Gary: I totally agree. Every single client I represent in chapter 11 feels that Linda is against them personally. I feel that the US Trustee's attorneys should be neutral and fair, yet they are always against the debtors, and I have expressed this feeling to them and the judges for years. You would need to write the US Trustee in Columbia, her boss, but that will do little good. Therefore, you would need to write the judge, and the US Trustee nationwide, plus your Congressman and Senator to get any attention whatsoever.

Bob

> From: Robert H. Cooper
> <rhcooper@thecooperlawfirm.com
> <mailto:rhcooper@thecooperlawfirm.com>
> >
> To: gawcpi@att.net
> <mailto:gawcpi@att.net>
>
> Sent: Monday, January 18, 2016 10:04 PM
> Subject: RE: RE: Steve Siegler; Gary Washington
> Matter
>
>
> Gary, what is the status of the 10k you
> proposed? I have already paid for six transcripts which
> total a couple thousand dollars as you are aware. There
> will be much work involved in the appeal, and as you are
> aware, I have much to lose in placing my name yet again on
> the challenges versus lawyers and a judge with whom I have
> known for 25 years, and intend to practice in front of for
> many years to come. Please advise.
>
>
> -----Original
> Message-----
> From: gawcpi@att.net
> <mailto:gawcpi@att.net>
> [mailto:gawcpi@att.net
> <mailto:gawcpi@att.net>]
>
> Sent: Monday, January 18, 2016 11:35 AM
> To: rhcooper@thecooperlawfirm.com
> <mailto:rhcooper@thecooperlawfirm.com>
>
> Subject: Fw: RE: Steve Siegler; Gary
> Washington Matter
>
> Bob
>
> Please forward all transcripts
> to Steven, Milling, Robert and Alex as they all need to hear
> from you that you are my core leader and yr thoughts based
> on Steven determination.
>
> I
> did get a call from Paul Mitchell who is boss (chairman of
> SC community bank) he wants to transition of the building

His Name and future interest more important than client case

Subject: RE: Protest issues

From: Robert H. Cooper (rhcooper@thecooperlawfirm.com)

To: [redacted]

Cc:

Date: Saturday, March 12, 2016 2:51 PM

Gary: As one of your attorneys, I absolutely recommend that you and as many colleagues, associates, friends ar neighbors carry out this protest, and draw to the public and the government how you have been wrongfully treated. I would also recommend that you contact the news media (radio, newspaper, television) to advise of the protest times and dates to add even more attention to the wrongs that have been committed against you.

Robert H. Cooper

Attorney at law

From: thecooperlawfirm <rhcooper@thecooperlawfirm.com>
To: 'Wendell L. Hawkins' <wlh@wlhawkinslawfirm.com>
Cc: gawcpi@att.net
Sent: Tuesday, June 30, 2015 2:26 PM
Subject: Washington motion for sanctions vs Davis final .docx

Wendell: Here is a copy of what I filed in the Bankruptcy Court yesterday just for your information as it contains certain facts and a history of the case. I expect the judge may schedule a hearing in Columbia on July 16 at 10:30 a.m., which Gary and I will attend. I will confirm this when the hearing date and time is scheduled. I am checking with the Court to determine if it still has transcripts or recordings of a preliminary and final "362" hearing that was held on Feb 12 and Feb 19 of this year. In spite of the fact that the transcript of an initial 362 hearing that was held on Jan 7th,clearly shows both attorneys Davis and Webb (lender's counsel) and a bank officer describing the terms of a settlement to the judge with him asking questions, a second 362 motion was filed by the lender's attorney on Jan21 with no mention whatsoever of the settlement. Unfortunately, Davis (Washington's attorney) in his "canned" objection, said absolutely nothing about the settlement, so by reading the record of the Court with the Jan 7 transcript, it leaves one confused about why after hearing all of the settlement terms on the record on Jan 7, the judge lifted the stay. Now, after the judge lifted the stay, Davis finally argued that the parties had an agreement they announced on the record (on Jan 7, 2015) in his Motion to Reconsider the Lift Stay he filed with the Court. And in the lender's response, its attorney stated that although a preliminary agreement had been announced with terms on Jan 7, no real agreement had been consummated in writing. However, because I do not currently have transcripts of those hearings, I do not have access to what the judge or the parties stated at the only other hearings the Court held on the matter which would be Feb12 and 19. I will keep you posted.

Bob

From: "Robert H. Cooper"
<rhcooper@thecooperlawfirm.com>
Date: Mar 3, 2016 6:55 PM
Subject: FW: Gary and Michele Washington
To: "Gary Washington" <gawcpi1962@gmail.com>
Cc: "gawcpi" <gawcpi@att.net>

Gary: The judge's scolding of Davis about trying to introduce the appraisal without Crider being present to testify as to its "authenticity" is in the April 6, 2015 transcript attached hereto, and on page 13 (bottom) and 14 (top) of that transcript. Please confirm receipt of this so I will know you received what you requested.

Bob

: gawcpi [mailto:gawcpi@att.net]

Sent: Sunday, May 1, 2016 9:05 AM

To: thecooperlawfirm <rhcooper@thecooperlawfirm.com>

Subject: RE: Follow Up

I have spent 45k an still no apology of the screw up that is still plaguing us of you feeling so close to Duncan that he should be overlooked in his actions of corruption. Which bring into account of you not correcting the 306k to 557k in the motion to reconsider.

When you stated you on board and experience far exceeded the rest I believe in you. Now you have turned scared for security of relationship with Duncan. He will not grant you favor again which is all the reason you should stand on principle and faith. All the getting along and deal making is not the best of lawyering when the truth is subverted.

If this legal system is so just why, in your heart, have you started playing for the other side. Again. you well know Duncan, Linda, Nelson teamed to stop fairness and did fraud upon the court. The judge let this happen.

I got Felder knocked out of this matter and gone. The City is scared. We are slowly dividing them.

Based on your word to me, your words..." I'm on your side" we can get Duncan and Bar gone.

I know your upset so am I but victory is in sight. If we can get Duncan and Linda gone I believe the bank an city will gladly come to the table. We should have another face to face with FDIC to clearly inform them how the bank have used their law firm (Nelson) to defraud the court and see what agency they can refer to open separate investigation maybe DOJ. We got the truth on our side. U need to get Crider in on the appeal by statement that the new roof has increased the property to over 600k and put in the injunction as you said, please. Once we tied CPI and my personal bankruptcy case together this case becomes a landmark case of victory. The dealings of my first case appeal of Duncan have in fact clouded his judgement. Each effort to help the bank is evident in his rulings and Linda being aware makes her culperable. Remember, Duncan didn't spare you when he thought you were coaching me on the stand. He put on the record quickly and rebuked you. Do you really think he will not hold our case

which you are running against you later in his rulings against you. Our case could seriously injure his reputation once to all in order that all the rigged agreements to satisfy the bank want for the property is focused off of and the refocus be fairness to all. Even the debtor who could have well satisfied confirmation if this dirty team didn't impede our progress.

Then Nelson and Bank will be in big trouble for lying to the court once Duncan and Linda are out if the way. My recent Appeal can be won and you can do it. The judge has now mandated you be counsel cause he believes your scared and will leave me in the wind. Prove your lawyering since he calling his bluff. Fight the good fight. I will pay.

Duncan is wrong in his behavior toward me and my case. I can not nor you prove his motive but its certain he has blocked the facts to come on the record or judge fairly my case before him. This is true with Linda. Business will never be as usual.

U well know I pay and have paid. Alex is up on deck for funds as he needs to turn in the Appeal.

You should order transcript and let us prepare the Appeal. Money coming.

Gary

*** Sent from my BLU smartphone device ***

"Robert H. Cooper" <rhcooper@thecooperlawfirm.com> wrote:

>Gary: I have spent over $2,200 ordering transcripts for which I have not been paid. I estimate that if you want this one on an expedited basis that would cost another $300. Therefore, if you want me to order that transcript, please send a check for the $2.500.

>-----Original Message-----

>From: gawcpi [mailto:gawcpi@att.net]

>Sent: Saturday, April 30, 2016 9:58 AM

>To: thecooperlawfirm <rhcooper@thecooperlawfirm.com>

>Subject: Follow Up

>

>Bob

>

>The recusal Appeal have been submitted. See attached. Finally, we on the offensive. The judge have forced us to work together.

>

>Strategy: Judge Duncan's bias against debtor disqualifies him. He unleased, by specific actions and inactions, forced CPI into bankruptcy. CPI filed bankruptcy to halt the sale of fraudulent Bank dealings in case 14-05589 to steal 1811 &1815 Gervais Street Properties. This I is the debtors Headquarters and minority incubator.

>

>The two dismissals motions based on Trustee Barr motion to dismiss 15-04646dd is initialed based on commingling of money and not paying required tax in compliance with bankruptcy requirements.

>The responsibility of the UST is to be impartial and fair dealing with debtor. Based on UST failure to comply with the law have forced the debtor to spend enmormis funds in order to defend against illegal and constitutional breach against him and his company CPI. This was orchestrated through abuse of power of the Judge and UST because of a vendetta. Whereas the debtor reveal an illegal activity of Judge Duncan use of magistrate judge to rubber stamp cases he desired to dismiss in order to grant property to First Citizen Bank. Once debtor revealed the Judge's illegally activity the Judge made a deal to confirm his case in exchange for withdrawal of debtor's appeal against Judge Duncan.

>

>This is the basis of the vendetta and the request for Judge Duncan to recuse himself. He have run afoul of his authority and a pattern of misbehavior and bias though his actions in the denial or reconsideration, lifting of the automatic stay and not disqualifying ineffective assistance of counsel Davis actions have disqualified Judge Duncan and UST Trustee from this case and their office. Mainly for the vendetta but more importantly the conspiracy to act in concert with Bank to Prevert the rules in place to be fair and unbiased.

>

>Please order the transcribe of our last hearing as it proves the recusal issue was before the motion to dismiss and other information needed to support the appeal.

>

>Please contact the attorney that represents my property located at 2917 River drive and make the offer of 185k for the sale of the property and authorization to sell it.

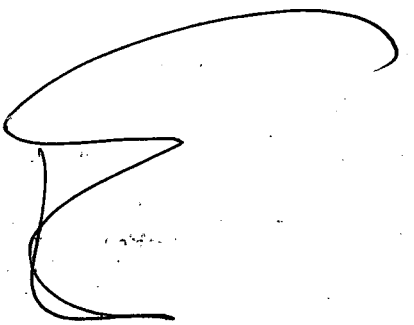
>

>Thanks

>

>Gary

Attach



Linda Barr had a predetermined outcome for the creditor to succeed in our case and others are also aware of this fact. One such person is one of the highest respected Bankruptcy Attorneys in South Carolina, Attorney Robert Cooper and his wife. The fact of the matter is that there is no accountability on Linda Barr until now, she was caught. Just like the now interim suspension of Attorney Jonathan Davis, **(see attachment one, Davis' Suspension Order dated Sep 7, 2017)**. What United States Trustee Linda Barr was actually doing is called **Gaming the System:**

Gaming the system can be defined as using the rules and procedures meant to protect a system in order, instead, to manipulate the system for a desired outcome.

To ignore my whistle blowing on United States Trustee (UST) Linda Barr's corruption on the Court may seem small but to ignore your own officer of the Court and a highly respected Bankruptcy Attorney is a major detriment to the future wellbeing of the Court System. This is what the sterling, highly respected Bankruptcy Attorney says about the actions of United States Trustee Barr, **(see attachment two, Attorney Robert Cooper's email, dated Dec 15, 2015).**

There must be an investigation into my complaint by an independent source that is qualified to reach a conclusion based on the facts already provided your office and these attachments. I would like to make myself available to be interviewed concerning Linda Barr corruption.

How many businesses that have employees, how many people have had dreams stolen and generational wealth stolen. These few bad, very bad lawyers have ruined people lives because of their greed. (Proverbs 18:5) We see the bank's attorneys Charles Webb, Nelson Weston and Linda Barr as the worst offenders. It is also our request that each and every case that the debtor has not received Bankruptcy Confirmation be evaluated in light of these "wrong people" being in position to dupe the system. **Attachment three**, Attorney Cooper's email dated Oct 16, 2016 at 3:28PM, is precisely what happened in this case which is the fraud put upon the Court.

Linda Barr's duty required her to investigate, review the schedules and bring forth a conclusion to the Judge. She never did this on behalf of this debtor. **Attachment four** are Court Schedules and exhibits proving that she was well aware of the Bank's fraud, specifically page 8. Linda Barr must be recommended for suspension of her law license until a full and open investigation is done to answer the questions and fact finding is accomplished.

There is NO WAY the now suspended Attorney John Davis could have accomplished the evil upon the Court and our business if Linda Barr did not accommodate him.

They have subverted the legal system for their own agenda. Allowed to continue more attorneys will sink into the depravity of stealing for the bank. Congress set the bankruptcy court to be fair and settle matters. The oversight on the bankruptcy court is poor. Justice has been in my case OPPRESSED! It is pass time that the Disciplinary Counsel suit up to investigate how these dismal attorneys used their law license, position of authority to cover their dirty dealings for their personal objectives.

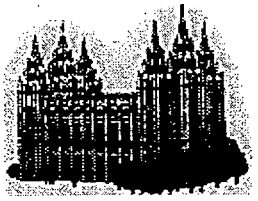
From: Robert H. Cooper <rhcooper@thecooperlawfirm.com>
To: gawcpi@att.net
Sent: Saturday, October 15, 2016 3:28 PM
Subject: RE: Activity in Case 3:16-cv-00128-CMC Washington et al v. South Carolina Community Bank et al Order

It is not unusual for the District Court to ratify the Bankruptcy Court's decision. After all, the Bankruptcy Court knows 10 times more about bankruptcy than the District Court. Bankruptcy is a specialty, and 99% of lawyers and judges know nothing about it. The 13 Circuit Courts that are just below the United States Supreme Court are much more sophisticated as they are required to know about all types of law = patents, bankruptcy, etc. The point that is not apparently being "driven home" is that the bank misrepresented the value of the properties when they had evidence of that value, and that it was substantially higher than the 306k scheduled. The bank's lawyer had an ethical duty to bring forth evidence it had in its possession (e.g. the 425k and 450k formal appraisals), because ethical rules require that a lawyer be perfectly candid with the court, and bring forth information of which it is aware, even if it is adverse to their case. The reason they are not allowed to simply remain silent is because they are aware that the judge is about to make a decision in their favor, and to not inform him of the information they had as to values substantially higher than your scheduled 306k would be synonymous with misleading the court. Think of it like this. A prosecutor is about to convict a defendant, but fails to bring forth evidence or information he has in his possession, and he says nothing, thereby allowing the defendant to be convicted. It would not matter is the evidence the prosecutor withheld would have changed the final outcome. It matters, because the lawyer has a duty to be perfectly candid (i.e. honest) with the Court. A law professor on ethics would know that, but the question is, has this been "driven home" in your brief? The 4th Circuit may consider that to be an ethical conflict, and not a substantial issue in your case. However, I disagree. Just like the example regarding the defendant above, the judge's position would clearly have been different if the bank had been honest and informed him of the evidence they had. Thereafter, the bank could argue that the value had depreciated since the formal appraisals. They took to low road and basically withheld important evidence, thereby misleading the judge. A judge cannot make a proper decision if he does not have all the facts. Unfortunately, he made that decision before I became involved in the case, so I had to try and revive you long after he had made that decision. I do not accept the fact that two judges have now pointed to the 306k, and that they are not concerned that the bank misled the court. The bank entered the

courtroom that day knowing full well they had listed a 425k value just two months before they now argued the 306k. Bottom line is, they misled the court.

Attach

F



Carolina Procurement Institute, Inc.

Mr. Gary Washington, President
1324 Furman Drive
Sumter, SC 29154
gawcpi@att.net

October 30, 2017

Attorney Lesley M. Coggiola
Office of Disciplinary Counsel
1015 Sumter Street, Suite G-08
Columbia, SC 29201

Subject: **Request Immediate Permanent Removal of United States Trustee Attorney Linda Barr from her Position, Execute Permanent Disbarment of Linda Barr's law license for State of South Carolina and the Reopen Case Number 16-DE-L-0472**

Attorney Lesley M. Coggiola and Attorney William C. Campbell:

One of our main concerns and issue which signifies Linda Barr's inadequacy and bias as a UST is the fact that she took time out, planned and entered the Court to stand up to the Judge and try to rehabilitate John Davis when in fact he was already removed as counsel and the Judge said that he (John Davis) had no business taking this case. Our point is why after Linda Barr knew that there was an equity issue concerning the core test of confirmation for me that she never addressed the issue on my (debtor) behalf? If Linda Barr had executed her fiduciary responsibility as the US Trustee our case could not have be dismissed. Her role was representative of the estate. Failure to make diligent inquiry into facts that would permit the automatic stay from being lifted was her job. She could have even employed, with the court's approval, a specialist to evaluate the property for equity. Linda Barr effectively denied our right to the services and responsibilities of a United States Trustee. We believe it is because of her bias. We could have paid all our creditors as intended by volunteering for bankruptcy after the Government Sequester. Linda Barr did as much or more to assist the stealing Bank, South Carolina Community Bank, as John Davis.

Why would she withhold her authority to request that the appraisals be brought before the Judge to get the facts of the City of Columbia and South Carolina Community Bank appraisal Market Value of 1811 and 1815 Gervais Street property was 450,000 dollars which is a difference of 144 thousand dollars than the 306k she was arguing on behalf of Davis? Moreover, why did she fail to address our appraisal of 557k from Mr. Crider?

We owed a total of 340k based on Charles Webb testimony which is the Bank's attorney. The fact is there was plenty equity is in the property to provide adequate protection to the bank for confirmation of this case. Why did she not confront Davis and request he inform the Court that he made mistakes so serious that he requests the Court to provide a new case that his client not be injured further? Barr and Davis already knew he could not recover from the damages done his client. Why did Barr permit the Bank and its attorneys to mislead the Court concerning Market Value of the property when she knew better?

What Linda Barr was trying to do is to solidify her protection of Davis and for the Judge not to unwind case for justice to be served. We believe this is the fact because she wanted the Bank to get the property like she tried to do in the previous case but failed. Her emphasis was not on her duties but our defeat.

EXHIBIT B 1 of 3

Crider, Bouye, Elliott, & Goodwin, LLC

Real Estate Appraisers, Educators, and Consultants
Website: www.cbeappraisals.com
2 Ridgeway Avenue
Greenville, SC 29607
(864) 232-1788

Charles F. Crider, MAI
Tracy J. Bouye, MAI
Heyward F. Crider, SRA (1934-2010)

Charles M. Crider, MAI, SRA
Robert R. Elliott, Jr., MAI, SRA
Eric D. Goodwin, MAI

March 12, 2015

Gervais Professional Suites
Mr. Gary and Michelle Washington
1815 Gervais Street
Columbia, SC 29154

RE: An appraisal of 1811 & 1815 Gervias Street, Columbia, SC 29154. Further identified by Richland County Tax Assessor as Parcels R11406-16-20 & R11406-16-19.

C. Matthew Crider, MAI, SRA inspected the above referenced property on March 5, 2015. The purpose of the appraisal/valuation analysis was to estimate the **"As-Is" Fee Simple Market Value,** of the subject property.

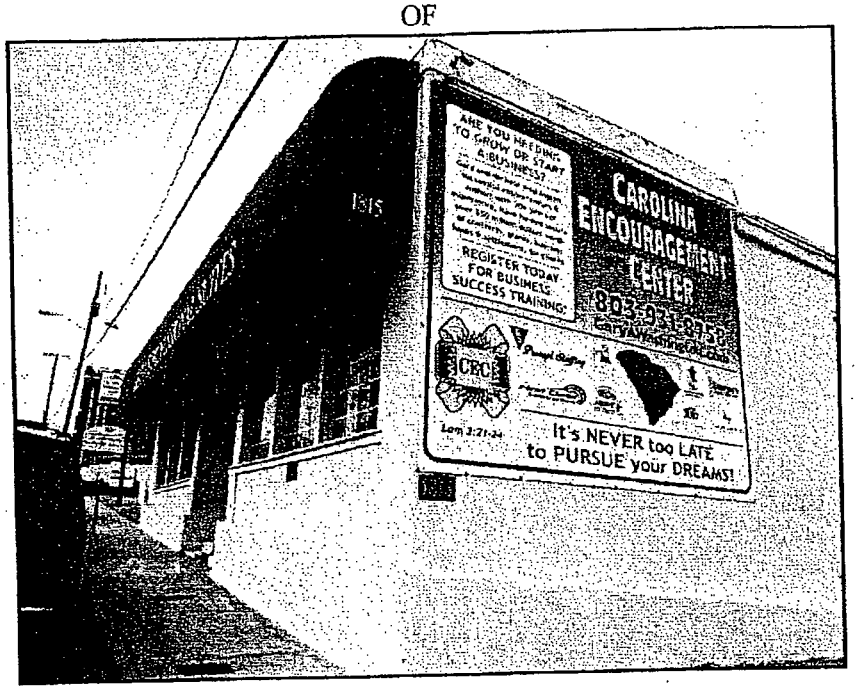
All data considered pertinent to the making of this report has been investigated and analyzed. Market Value, as used above, is defined in the attached report and in the Confirmation letter of this request, which is contained in the Addenda of this report. The reported analyses, opinions, and conclusions were developed, and this report has been prepared in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute, which include the Uniform Standards of Professional Appraisal Practice.

The existence of hazardous material beyond that which is discussed in the report was not observed by the appraiser. No responsibility is assumed by the appraiser for any such conditions, or for any expertise required to discover them.

C. Matthew Crider, MAI, SRA has not performed a service, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three year period immediately preceding acceptance of this assignment. This information has been disclosed to the client prior to the engagement of this appraisal.

AN APPRAISAL REPORT

OF



1811 & 1815 GERVAIS STREET
COLUMBIA, SC 29201

FURTHER IDENTIFIED AS TAX MAP NUMBERS:
R11406-16-20 & R11406-16-19

DATE OF VALUATION
MARCH 5, 2015

DATE OF REPORT
MARCH 12, 2015

PREPARED FOR
GERVAIS PROFESSIONAL SUITES
ATTN: GARY AND MICHELLE WASHINGTON
1815 GERVAIS STREET
COLUMBIA, SC 29154

PREPARED BY

C. MATTHEW CRIDER, MAI, SRA

This is an Appraisal Report, which is intended to comply with the reporting requirement set forth under Rule 2-2(a) of the Uniform Standards of Professional Appraisal Practice for an Appraisal Report. Pursuant to the Scope of Work, it presents only summary discussions of the data, reasoning, and analyses that were used in the appraisal process to develop the appraiser's opinion of value. Supporting documentation, concerning the data, reasoning, and analyses is retained in the appraiser's file. The depth of discussion contained in the report is specific to the needs of the client and for the intended use stated below. The appraiser is not responsible for unauthorized use of this report.

Based on my investigation, analysis, and conclusions, my opinion is that the estimated **"As Is" Market Value** of the subject property's Fee Simple Estate located at **1811 Gervias Street, Columbia, SC**, containing a 1,180 SF professional office building, as of March 5, 2015, subject to the General Assumptions and General Limiting Conditions is:

ONE HUNDRED TWELVE THOUSAND DOLLARS*
$112,000*

**Excludes FF & E associated with the current occupant's operation.*.

Based on my investigation, analysis, and conclusions, my opinion is that the estimated **"As Is" Market Value** of the subject property's Fee Simple Estate located at **1815 Gervias Street, Columbia, SC**, containing a 4,917 SF office building, as of March 5, 2015, subject to the General Assumptions and General Limiting Conditions is:

FOUR HUNDRED FOURTY FIVE THOUSAND DOLLARS
$445,000*

**Excludes FF & E associated with the current occupant's operation.*

Respectfully submitted,

C. Matthew Crider, MAI, SRA
SC Certification No. CG 5124

Ref. No. A-15009-MCA

APPRAISAL REPORT
of
1811 & 1815 Gervais Street
Columbia, South Carolina



Date of Valuation: March 14, 2014
Date of Report: April 2, 2014

Prepared For:

City of Columbia
&
South Carolina Community Bank

KENNEDY, WATSON, MCKINNEY & ASSOCIATES, INC.

April 2, 2014

Ms. Tina Herbert
City of Columbia
Office of Business Opportunities
1225 Lady Street
Columbia, South Carolina 29201

Ms. Rendella Robinson
South Carolina Community Bank
1545 Sumter Street
Columbia, South Carolina 29201

RE: 1811 & 1815 Gervais Street
Columbia, South Carolina

Dear Ms. Herbert and Ms. Robinson:

At your request, an inspection has been made for the purpose of providing an indication of the as-is market value of the fee simple interest in the referenced property. The following pages provide a description of the subject neighborhood, site, improvements, and factors considered relevant to the value estimate.

This document is intended to comply with all Federal Banking Regulations, primarily OCC Regulation 12 CFR Part 34, FDIC Regulation 12 CFR Part 323, and Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The appraisal report is also intended to conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

The competency provision of USPAP has been fulfilled in that the appraiser has the necessary experience and knowledge to render a value estimate for the subject property. I certify that I have no financial interest in the subject property, present or contemplated, and that my employment was not conditional upon producing a specified value within a given range. Future employment prospects are not dependent upon producing a specified value and payment of the appraisal fee is not based on whether a loan application is approved or disapproved.

After applying the methods and techniques recommended by the Appraisal Foundation and analyzing data presented, including Assumptions, Statement of Certification and Contingent and Limiting Conditions, I estimate the market value of the fee simple interest in the subject property, as of March 14, 2014, to be:

FOUR HUNDRED FIFTY THOUSAND ($450,000) DOLLARS.

This value is subject to the extraordinary assumption that all of the current tenants are in occupancy on leases of less than a year in duration. This assumption nullifies any effect the contract rents may have on the value estimate and results in a fee simple value. The value estimated provided in this report may be affected if this assumption is proven false. The extraordinary assumption will be more fully explained later in the report

Should you have questions concerning this report or its findings, please feel free to contact me at 803/743-4444.

Sincerely,



William I. McKinney, Jr.
SC General Certified Appraiser #150

Kennedy, Watson, McKinney and Associates, Inc.

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Subject Rent Roll
Subject Promotional Information
Terminology
Engagement Letter
Appraiser's Qualifications

Bill McKinney

From: "Rendella Robinson" <rrobinson@sccommunitybank.net>
To: "Bill McKinney" <bmckinney@kwmappraisal.com>
Cc: "Walter Taylor" <wtaylor@sccommunitybank.net>
Sent: Thursday, March 06, 2014 4:03 PM
Subject: Appraisal request Letter and Request form(Carolina Procurement 11-03-2011).doc
Appraisal request

Date: **March 6, 2014**

Bill McKinney
Appraiser: **Kennedy, Watson and McKinney**
Address **1420 Henderson Street**
City, State Zip: **Columbia, SC 29201**

Re: South Carolina Community Bank Appraisal Services Request
(Property Address) **1811 and 1815 Grevais Street**
Columbia, SC 29203
Dear Mr. / Ms. Appraiser

Upon execution of this agreement, you are authorized to perform the requested appraisal services as specified in Appendix A of this document. The signatory to this engagement letter must be a signatory to the appraisal assignment and must inspect the property to be appraised. Any changes in this agreement must be authorized, in writing, by the undersigned. Conditions of the assignment are as follows:

APPRAISAL STANDARDS

The appraisal assignment must be prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) and appropriate federal regulations.

BILLING

Invoices must include your Federal Tax ID number or Social Security Number.

CONFIDENTIALITY

The undersigned authority is your confidential client. You are to take all reasonable steps to ensure that you and your organization divulge no information concerning your appraisal report to any person other than the undersigned.

Appraisal

South Carolina Community Bank reserves the right not to accept your report, and will not be responsible for any expenses incurred in the completion of the assignment, if wording or disclaimers are included in the report which limit your professional liability to South Carolina Community Bank.

EFFECTIVE DATE

The date of valuation must be within thirty (30) days of the delivery date, unless instructed otherwise.

CONFLICT OF INTEREST

All members and/or appraisal sub-contractors of your organization certify that they have no personal, business or other relationship(s) with the subject property's ownership and are not related to the undersigned. Otherwise, you must attach an explanation disclosing the nature of such relationship(s) which must be reviewed and accepted by the undersigned before proceeding. Further, your acceptance of this assignment certifies that you agree not to accept or pursue the appraisal, or related assignment, of the subject property, or other assignments with the subject property's ownership (excluding limited partners who are not primary principals, and other financial institutions), for a period extending one year from the latter of the effective date of the assignment, its delivery date, or the conclusion of ongoing or pending litigation, without providing prior written notification to South Carolina Community Bank.

INTENDED USE

The appraisal report is intended to be used as an aid in proper underwriting, loan classification and/or disposition of the asset.

REPORT OWNERSHIP

Your acceptance of this appraisal assignment will confirm that we own the appraisal reports which you provide, and that we will be under no restrictions regarding their redistribution to other interested parties of our choice.

PHOTOS/RESIDENTIAL

South Carolina Community Bank would like along with exterior photos, (3) interior photos one being the kitchen and photos of any damage (cosmetic significant or structural).

PHOTOS/COMMERCIAL

South Carolina Community Bank would like along with exterior photos, (5) interior photos and photos of any damage (cosmetic significant or structural).

Sincerely

Accepted by: Bill McKinney
March 6, 2014

3/6/2014

Request For Appraisal

Appendix A

t I-Request

To (Name and Address of appraiser):				2. From (Name and address of lender):	
l McKinney **nnedy, Watson, McKinney, & Associates** **20 Henderson Street** **lumbia, SC 29201**				**SOUTH CAROLINA COMMUNITY BANK** **1545 Sumter Street** **Columbia, S.C. 29204**	
ydella R. Lake			4. Title: **Loan Closing Manager**	5. Date: **3/06/2014**	6. Lender's No: **803 544-9648 fax 803 733-8100 ext 1106**
4. Title: **SVP Administrative Assistant**	5. Date: **09/02/09**	6. Lender's No: **803 544-9648 fax 803 733-8100 ext 1106**			

ne and address of applicant: **Carolina Procurement Institute Inc.**
1811 and 1815 Gervais Street
Columbia, SC 29201

t II- Property and Mortgage information

Property Type:	9. Occupancy Status:	10. Type of Loan:	11. Lien Position:	12. Loan Purpose:
Detached	Primary Residence	X Conventional	X First Mortgage	Purchase
ttached	❑ Second Home	❑ FHA	❑ Second Mortgage	Cash-Out Refi
Condo	Investment Property	❑ VA		No Cash-Out Refi
PUD	X **Commercial**	❑ FMHA		**Construct/perm**
CO-OP				X **Update Appraisal**

Property Address: **1811 and 1815 Gervais Street**
Columbia, SC 29203
County: Richland

For Appraisal:

Scope of service:

The scope of the service must include the Residential or Commercial full appraisal process and a narrative manuscript report, (or specify UCIAR-EP, UCIAR-SP appropriate residential form). For Commercial Appraisal include :
__Cost Approach__Market Approach__Income Approach

For

luation:

At a minimum, the scope of the service should include the
❑ Cost Approach ❑ Market Approach ❑ Income Approach
(Choose one or two most applicable approaches).

Listing Agent:	21. Selling Agent: **Walter Taylor**

t III-Appraisal Information

Due Date: **ASAP**

Type of Appraisal: Full ❑ Drive By ❑ Market Rent Analysis ❑ Subject to completion

Approaches to value: Sales comparison, Income Approach and Cost Approach

Contact for entry, if not same as borrower:

Comments: **Contact Person: Gary Washington 803 238-4542 or Walter Taylor 803 733-8100 Opt. 2 opt. 1 ext 1130**

Disclaimer:
This message is intended only for specified recipients. If you are not the intended recipient you are notified that disclosing, copying, distributing, or taking any action in reliance on the contents of this information is strictly prohibited. This communication represents the originator's personal views, which may not reflect those of South Carolina Community Bank. Security Warning: This message is being sent over an unsecured medium. Recipients should not reply to this message with sensitive or confidential information. If you received this email in error, please immediately notify postmaster@sccommunitybank.net.

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Checked by AVG - www.avg.com
Version: 2014.0.4259 / Virus Database: 3705/7159 - Release Date: 03/06/14

3/6/2014

Bill McKinney

From: "Featheringill, Paul A" <pafeatheringill@columbiasc.net>
To: <bmckinney@kwmappraisal.com>
Sent: Friday, March 07, 2014 3:11 PM
Attach: image001.png
Subject: engagement letter

Mr. McKinney,

My director, Tina Herbert, has requested an engagement letter from you for the appraisal for 1811-1815 Gervais Street.

Based on our discussions, the terms were:

- $3,000
- 30 days to complete
- Cost split equally between City of Columbia and South Carolina Community Bank
- Addressed to both
- Invoiced to both

If you have any questions, please let me know.

Thanks!
Paul

We Are Columbia

Paul Featheringill
Business Loan Officer

Office of Business Opportunities
1225 Lady Street, Columbia, SC 29201
Phone: 803-545-3259
Fax: 803-255-8912
pafeatheringill@columbiasc.net

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Checked by AVG - www.avg.com
Version: 2014.0.4335 / Virus Database: 3722/7165 - Release Date: 03/07/14

3/7/2014

Attach

G

[illegible] to understand that it does seem so well for you to break the tax sale bill. Under [illegible] appreciate that we will need time to weather the storm of the housing slump as a result of over [illegible] of loans or mortgages. We do realize you have lent a little bonus to totally or subprime but has the [illegible] BC Community Bank has to administrate the Market Value of my properties at $810 and $815 [illegible] Street Delta.

On another token all the properties of the basis of my appraisal. The proprietors had real interests [illegible] equity and are not clear [illegible] encumbrances. What we are essentially dealing [illegible] Bill Barnes failed to do properly.

The court was more concerned having Robert do a good faulty get a bonded view. The borrower has [illegible] and of court that do to their own BC Community Bank based the courts bet and as [illegible] Mr. Barnes failed to do properly.

The pronouncement by the judge as he drove them to us was the settlement that they endorsed at [illegible] as per award by Attorney Wells as transcript.

Note: If any Robert Cowper Investigations have much interest I find to spend to get to the truth of [illegible] matter write Wells v. Westminster BC Community Bank who are even now standing on a lot but they tried to the Court as truth.

The way to our success of the judge there ending and I should be out of which as the word which will do if business is not intended any. Let which the bank and BC Community Bank is wrong to [illegible] the courts as the proper way but the City of Columbia failed to not act at their best and wrong of the laws.

We should have Rent Roll actually as to who continue to pay the City of Columbia a portion of [illegible] Rent Roll actually as to who continue to pay [illegible] proprietary or [illegible] [illegible] required. Again, here Robert we have put on it to investigate that CTV has not report into the proprietors by notice of the City of Columbia - who are being redeveloped against my property by Community Bank stated in their facts that the properties valued at $450,000, after which have generally had the properties associated with the City of Columbia to them up the value for [illegible] purposes.

The living of the fact that the City of Columbia wrote off the debt against my company and moved me to pay it back through CRA. The denial to redeemed from me as a result and the debt should be paid by Attorney Tomslee from Owner's statement ($40.0) to the City of Columbia was under the a time limit during. Nine years 11 years later, after the bonded drawing, the City of Columbia is trying to be illegal actions to the small guy as a debtor and drive me out of company. Worse as fact, the same item by the City of Columbia should have double own.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IN RE:	) Case No. 14-05589-DD
	) Chapter 11
GARY ALLEN WASHINGTON and	)
MICHELE ANNE WASHINGTON,	) 1100 Laurel Street
	) Columbia, South Carolina 29201
Debtors.	)
	) August 13, 2015
	) 10:31 a.m.

TRANSCRIPT OF MOTION FOR DISGORGEMENT OF ATTORNEY'S FEE AND FOR SANCTIONS FILED BY ROBERT H. COOPER ON BEHALF OF GARY ALLEN WASHINGTON, MICHELE ANNE WASHINGTON
BEFORE HONORABLE DAVID R. DUNCAN
UNITED STATES CHIEF BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors:	The Cooper Law Firm By: ROBERT H. COOPER 3523 Pelham Road, Suite B Greenville, South Carolina 29615
For Jonathan L. Davis:	JONATHAN L. DAVIS P.O. Box 746 Blythewood, South Carolina 29016
For the U.S. Trustee:	Office of The United States Trustee By: LINDA K. BARR, ESQ. 1835 Assembly Street Suite 953 Columbia, South Carolina 29201
Audio Operator:	Leila Balliet
TRANSCRIPTION SERVICE:	**TRANSCRIPTS PLUS, INC.** **435 Riverview Circle** **New Hope, Pennsylvania 18938** **Telephone: 215-862-1115** **Facsimile: 215-862-6639** **e-mail CourtTranscripts@aol.com**

Proceedings recorded by electronic sound recording, transcript Produced by transcription service.

I N D E X

WITNESSES FOR MOVANT	DIRECT	CROSS	REDIRECT	RECROSS
JONATHAN DAVIS				
By Mr. Cooper	4			
GARY WASHINGTON				
By Mr. Cooper	30/51			
By the Court	47			
By Mr. Davis		52		

WITNESSES FOR RESPONDENT	DIRECT	CROSS	REDIRECT	RECROSS
JONATHAN DAVIS				
By Mr. Davis	70			
By the Court	73/81			
By Mr. Cooper		79		

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THE COURT: 10:30 this morning, we have just one matter on the calendar, it's Case 14-5589, Gary Allen and Michele Anne Washington, a motion to disgorge attorney's fees and for sanctions.

Let's begin with appearances by the movant.

MR. WASHINGTON: Good morning, sir. This is Gary Washington, and my wife, Michele Washington.

THE COURT: Mr. Washington.

MR. WASHINGTON: We're represented by Mr. Bob Cooper, and he should be here --

THE COURT: Mr. Cooper just walked in.

MR. WASHINGTON: Yes, sir. And Mr. Cooper --

MR. COOPER: Sorry I'm late, Your Honor. There was a wreck on the interstate.

THE COURT: All right. And -- Mr. Cooper, I have just called the case, and was beginning to get appearances. Your client stepped up, and announced his and his wife's appearance.

MR. COOPER: Robert Cooper for the debtors in possession, Your Honor.

THE COURT: All right. And any other appearances for the movant?

(No audible response heard)

THE COURT: All right. And appearances in opposition to the motion.

MR. DAVIS: Jonathan Davis on my own behalf, Your Honor.

THE COURT: All right. Mr. Cooper, you are the movant here. Do you have any short preliminary opening statement that you want to make, or can we just get right to the motion?

MR. COOPER: We can get right to it, Your Honor. Everything that we have to say is in the motion. And I would call Jonathan Davis to the stand.

THE COURT: You want to call Mr. Davis, all right. Mr. Davis -- he's a member of the Bar, and do you want him sworn or not?

MR. COOPER: I would prefer him sworn, Your Honor.

THE COURT: All right. Mr. Davis, come on up to be sworn.

COURTROOM DEPUTY: State your full name.

MR. DAVIS: Jonathan Lemuel Beale Davis.

JONATHAN DAVIS, SWORN

THE COURT: All right. Mr. Cooper.

DIRECT EXAMINATION

BY MR. COOPER:

Q Mr. Davis, could you state your name and address for the record?

A Jonathan Davis, mailing address is P.O. Box 746, Blythewood, 29016.

Q And how long have you been at that address?
A I believe around three years, two and a half years.
Q Okay. You probably need to speak up a little bit, maybe move the microphone towards you.

Did you relocate from that address during the course of representing Gary and Michele Washington?
A Um.
Q Do you recall when you first met Mr. Washington?
A I don't remember exactly when it was. It was sometime prior to October of last year, several months earlier.
Q And do you recall what you were -- what the purpose of the meeting was?
A Mr. Washington wanted to discuss the possibility of filing Chapter 11 bankruptcy.
Q And had you filed a Chapter 11 bankruptcy before that date?
A I had not, no.
Q Did you advise him of that?
A I did.
Q You're a member the South Carolina, is that correct?
A Member?
Q Yes.
A Yes.
Q Are you a member of any other bar license in any other state?

A No.
Q You're aware of the Model Rules of Professional Conduct?
A Yes.
Q Were you familiar with Chapter 11 guidelines at the time that you accepted this case?
A To a limited degree, but not -- I wasn't well-versed in them, no.
Q So you admit that you had never filed a Chapter 11 before, and that you were not well-versed in the guidelines and rules.
A Yes.
Q Are you familiar with the South Carolina Appellate Rule 407?
A (No verbal response)
Q Let me help you with that. It states basically that a lawyer, licensed in the State, is responsible for advising someone that they have not handled that type of matter before and, therefore, they should not handle that type of matter. It's not an experiment.
A I advised Mr. Washington that I had never filed a Chapter 11 case before. I told him that I would possibly be able to do it with assistance. Mr. Washington apparently had no other attorney who was willing to take his case as he came back to me just in time to file an emergency filing to prevent the foreclosure of his building the following Monday.
Q All right. When you filed the case, had you met with

Michele Washington, as well?
A I had not. Mr. Washington provided the documents for her to sign. I talked to her on the phone several times, and my impression was that she did not want to really be involved with the case, and only wanted to make sure that she wasn't going to be harmed by his filing the case.
Q You -- you've never met with Mrs. Washington?
A Uh, I've spoke to her on the phone several times, and I met her. She was at the 341 meeting with --
Q Mr. Washington. Well, would it surprise you to know that you actually had met with her at your office?
A I don't recall her coming to the office, but I could be mistaken.
Q So you filed the Chapter 11 case, and you filed the schedules and statements of affairs. Were you aware at the time of the filing that the debtors had filed previous a bankruptcy?
A I was aware that he had filed a previous bankruptcy. I --
Q Why --
A -- mistakenly omitted that.
Q Why then on the petition, Page Number 2 where it says "Other bankruptcies within the last year," was your answer none?
A He had not filed a bankruptcy within the last year. However, he had filed a bankruptcy within the last eight years.

And as I said, we filed an emergency case because his building was going to be foreclosed the following Monday, and I erroneously omitted that in preparing the emergency --

Q Excuse me. I'm going I meant to say appears. Are you aware that in this District, lawyers have been sanctioned for failure to report prior bankruptcies in the last eight years?

A Not personally, but I accept your statement.

Q Do you have a Pacer account?

A Yes.

Q Did you have a Pacer account at the time you took on this case?

A I did. As I said, I was aware that he had filed prior bankruptcies. It was an error. It was not an intentional omission.

Q Okay. Now when you filed the schedules and statement of financial affairs, that consisted of about 42 pages, according to the record. Didn't you have to go back and make some considerable amendments?

A Yes.

Q Can you tell us about that?

A The -- specifically -- I mean there are a number of amendments that needed to be made. I think I had to amend them twice actually. There are a number of --

Q Yes, sir?

A I guess that's about it. Yes, I -- there were errors in

the first submission, those were amended --
Q And --
A -- and I believe I had to amend it again.
Q What was the cause of those errors?
A Presumably a combination of haste and trying to get things taken care of for Mr. Washington before deadlines expired so that he would be able to proceed in his bankruptcy.
Q So when you first amended the schedules, would you be surprised to know that the record reflects that you amended Schedule B, C, D, E, F, G, H, I, and the statement of financial affairs?
A No, I would not.
Q Do you -- are you familiar with Rule 2016, Federal Rules of Bankruptcy Procedure?
A Could you elucidate?
Q You are familiar with that?
A I'm not off the top of my head, no.
Q Okay. That states that you must disclose the amount of compensation that you have received in any bankruptcy case, and that you must disclose the terms, and how much you received, how much you're going to receive, what the balance is. Now are you familiar with it?
A Yes.
Q You've been practicing bankruptcy for how long?
A Um, probably a total of eight years.

Q And you're telling this Court that you don't -- you're not familiar with Rule 2016?
A I'm familiar with the Rule, I just don't have a memory that remembers the specific numbers without assistance.
Q Are you familiar with 28 U.S.C. 1930, that's a Chapter 11 section?
A (No verbal response)
Q Let me help you with that. That discusses quarterly fees that are paid to the U.S. Trustee's Office each quarter.
A Yes.
Q Each calendar quarter. Were you familiar with that at the time you took on the case?
A Passingly, but not -- as I said, I had no experience with a Chapter 11 before this case which I expressed to Mr. Washington before.
Q So you were not able to advise Mr. Washington and Mrs. Washington at the time that they would incur additional fees by way of quarterly fees to the U.S. Trustee's Office?
A Presumably having filed two bankruptcy cases in prior history, Mr. Washington was aware of that himself. However, we did discuss that he would have a trustee payment, which would have additional fees that the trustee would earn.
Q So you're placing the burden on Mr. and Mrs. Washington because they filed prior Chapter 11 cases, and you don't think that that's your responsibility to inform a client?

A I think that Mr. Washington appeared the weekend before his building was going to be sold, and I attempted to help him with something that I told him I wasn't entirely familiar with. So -- I mean, yes, I do have to -- the responsibility to find these things out. But he was aware going into this that I was not --

Q Are you familiar with Federal Rule Bankruptcy Procedure 2015?

A Which is?

Q Let me help you with that. That's a statute that says that you must report all interest that the debtor has in businesses. They're individuals and they have businesses, so you must report that.

A Yes.

Q Were you familiar with that at the time?

A Yes.

Q Do you recall what period of time you're supposed to file that document?

A No.

Q Seven days after the 341. And why did you file it 34 days after the petition?

A Presumably erroneously believed that I had filed it in the initial -- I filed it -- I filed the completion of the emergency in time, and should have been in that, but I'm not positive.

Q Let me ask you this, Mr. Davis, what discussions did you have with the U.S. Trustee's Office about all of these deficiencies?
A Various e-mails.
Q Were they informing you that you had not done some of these things, and that sort of prompted you to do that?
A Some of them, they informed me that I had not done. But most of them, they probably informed me that I had filled it out incorrectly and, therefore, I was prompted to change it.
Q So the U.S. Trustee's Office prompted you to amend the schedules?
A On -- on occasion, yes.
Q Prompted you to file your 2016 disclosure statement?
A Probably.
Q Prompted you to file the 2015 statement?
A (No verbal response)
Q Are you familiar with South Carolina local rule 507(5)?
A No.
Q That rule states that the Court will order you -- and you can see it on Pacer on ECF -- to serve certain documents so that BCN doesn't -- BNC doesn't serve those. You are not familiar with that rule?
A I'm aware of that, yes. I just -- like I said, I don't always remember the numbers.
Q Without going through each individual one, as I stated in

my motion, there are several things that the Court had ordered you to serve, several orders, and they still haven't been served. You said you had a Pacer account?

A Yes.

Q Did you not see those things?

A I'm not aware of the timing of them, but I've been removed from the case, so there are things that I haven't --

Q These were things that were ordered well before you were removed from the case. So you have no explanation for that?

A At the moment, my explanation is that those things that I was still planning to do, and attempting to do when I was removed from the case, I ceased doing as I was asked by Mr. Washington to not take any more action in his behalf. So --

Q You remember the 362 motions that -- and hearings that were held in this case.

A I do.

Q Are you familiar, and were you familiar at that time of the burden of proof in 362 motions?

A I am. I was.

Q Would you explain that to us?

A The movant can show that there is not adequate protection. Defenses to adequate protection include equity in the building or necessity of the building for reorganization.

Q Do you recall what evidence you introduced as to the value of the building in question -- the two buildings in question?

A We -- from the beginning when we filed the case, stated that the buildings were worth approximately $306,000.
Q That's you put on your schedules, right?
A Correct, based on my discussion with Mr. Washington.
Q Were you not aware that that was going to assist the creditor in approving there was no equity when a 362 motion was filed?
A Yes. However, Mr. Washington said that he did not believe the buildings were worth as much as the bank's appraisal, insisting several times that the bank had to agree that the value was worth less than what they said he owed. Even to the point of the first 362 motion where we were in settlement negotiations, Mr. Washington wanted to make it a part of the settlement that the bank had to agree that the building was worth less than they said it was worth, despite my telling him that it didn't matter what the bank thought the building was worth as long as they agreed to a settlement.
Q You filed this case on October 3rd, 2014.
A I believe so, yes.
Q Did you not have in your file a formal appraisal dated January the 12th, 2013 that showed the value of the buildings at 425,000?
A Yes. However, Mr. Washington said that he did not believe the buildings were worth that much. And as he is owner of the buildings, and the client whose intent I'm supposed to try to

follow, when he told me that he wanted the bank to agree the building was worth less, and that that was the actual value he thought the building was worth, I agreed with him.

Q You don't agree, as a lawyer, that you should control that?

A No, I believe that Mr. Washington had some loan that he said he might get if the building was worth less, and that the goal of the -- the goal of the -- I'm failing to -- the strategy is -- is my purview, or whatever. But the -- the actual goal of filing the case and everything is supposed to reach what he wants as the client.

Q Were you aware of a Mr. Crider, who had done a -- that's C-R-I-D-E-R, who had done a formal appraisal subsequent to the appraisal I just mentioned?

A I know that there is a Mr. Crider who I believe did an appraisal after the appraisal that you mentioned.

Q True, but before the 362 motion.

A No, it was after the 362 motions.

Q There were three 362 motions, right -- two 362 motions, correct?

A Technically there were three court dates because one, Mr. Washington was at work in Sumter, but the appraisal was done later because it was done after the work on his building was finished, which we believed increased the value of the building.

Q You said Mr. Washington did not attend that hearing?
A Correct.
Q And you said because he was at work?
A He was not properly served at that -- on that date.
Q Not properly served by the creditor?
A Correct.
Q When did you advise him of the hearing?
A A couple days before the hearing, I called him to make sure he was ready, and he said that he couldn't be there because of the -- because he had scheduled work in Sumter that he couldn't miss. So I came, and asked the Court to let him come back at a subsequent date. The Court wanted to go ahead and have a hearing as to the value of the building because, at that point, Mr. Washington had not decided that he wanted to argue there was equity yet. And so since we really had nothing to argue about, I didn't see the point in -- in -- in trying to put that off, so we went ahead and had that.

Then the Court allowed us to come back the following week to present argument as to the necessity of the building for the reorganization.

Q And at the hearing that Mr. Washington was not present, what did you offer as evidence as to the value of the two buildings?
A We didn't offer any evidence. We agreed because that was what we had said all along, was -- and the bank agreed --

decided to -- I mean because it was in their interest obviously. But the bank decided to agree with our valuation, so there was no evidence offered. I didn't have Mr. Washington present to offer evidence in any event.

Q And what valuation did they agree to?

A 306,000 and whatever change.

Q Would it surprise you, Mr. Davis, to know that they've put in their motion that the value was $450,000?

A I know that they did that initially. But as I told you, Mr. Washington insisted that the bank had to agree that the building was worth less than what they said it was worth. Therefore, when they agreed, I was accomplishing what he said his goal was.

Q And when he was present at the next hearing, what evidence did you present?

A We were not presenting evidence as to equity at that point because I -- as to valuation at that point because that had already been decided previously. We had presented evidence that Mr. Washington had contracts through the company that were -- that if he lost the building, he would no longer be in a HUD zone and, therefore, would no longer be eligible to have those contracts. And that since the corporate income is the majority of his personal income, that would hinder his ability to have a successful reorganization.

Q You mentioned the word "HUD zone," could you spell that

for me?
A H-U-D Z-O-N-E, I guess.
Q Are you familiar with what that means?
A It's a -- I thought it was Housing and Urban Development, but it's apparently if a business or property or whatever falls within a certain region, that it's determined to be in need of financial assistance, they're more eligible to receive certain contracts and --
Q The proper term is HUB, H-U-B Zone.
A Oh, sorry.
Q The explanation you just mentioned, you got that from my motion, correct?
A No, I got that from preparing to present it at 362.
Q If that's true, why did you think it was HUD Zone, and Housing and Urban Development?
A I misremembered the letter.
Q Do you recall having a discussion with Mr. Washington about an appraiser named Crider, C-R-I-D-E-R?
A I do.
Q And what do you recall about that?
A He was going to get him to do an appraiser after work on the property was completed in the hopes that we could present new evidence that the work had increased the value of the building, therefore, granting him equity in the property, which would have been adequate protection for the purposes of

defeating the 362 motion.

Q And did you have Mr. -- did you talk to Mr. Crider?

A I did speak to Mr. Crider. Mr. Washington had informed me on several occasions that Mr. Crider was going to come testify, and that he needed a subpoena as a technicality.

When I spoke to Mr. Crider, Mr. Crider said that he was not going to come testify, and Mr. Washington had hired an appraisal -- appraiser out of Greenville, I'm not even sure it was in the reach of a subpoena. But at that time, he didn't come show, so I had to present Mr. Washington's testimony as to what he thought the building was worth instead.

Q Did you -- do you recall the amount of Mr. Crider's formal appraisal?

A I believe it was somewhere in the $500,000 range, I'm not sure exactly.

Q Would it surprise you to know that it was 557,000?

A No, that doesn't surprise me.

Q Wouldn't that have created a substantial equity in the property?

A Yes, it would have.

Q Did you attempt to have Mr. Washington testify to Mr. Crider's appraisal at the 362 hearing?

A I attempted to have him testify as to his belief of the value of the building, which was substantiated, I believe, by the appraisal since Mr. Crider was not present.

Q And, of course, you, as a lawyer, would know that Mr. Washington could not testify as to the authenticity of that appraisal.

A He could not, but as the owner of the building, he does have standing to testify as to the value that he believes that it has. And certainly his opinion of that value could be increased by the fact that work was done, and that there was an appraisal performed.

Q And are you aware that his testimony would have less weight and evidence than Mr. Crider's formal testimony as an expert? In other words, Mr. Washington's testimony may be viewed by the Court as self-serving.

A I'm aware of that. Ultimately I believe the Court decided that evidence as to the value of the building was improperly presented at that time anyway and that it should have been presented earlier while Mr. Washington was still insisting that the value of the building was lower. So I don't know that it ultimately had any affect in this case. But, yes, I believe Mr. Crider's testimony would have been preferable.

Q Are you familiar with Section 327 or 330 the Bankruptcy Code?

A (No verbal response)

Q Let me help you with that. That discusses fees and expenses paid to professionals.

A Okay.

Q You would be one of those professionals. So did you file an application to receive compensation in the case?
A I filed an application to be employed. I have not yet filed an application to receive compensation.
Q How much money did the Washingtons pay to you?
A Somewhere in the neighborhood of 45 hundred dollars.
Q Forty-five hundred? Did that include --
A That does not include a filing fee of 17 hundred.
Q Do you recall you and I having a series of telephone conversations after you were excused by the Court as the debtors' attorney?
A Yes.
Q Well, let me ask you this first. When they paid you the money, what did you do with the money?
A Initially I had it on-hand, I put it in an account, and then I had to open a trust account because I didn't have one prior to that as I never had a client that I required trust account for.
Q You never had a client that you required a trust account -- are you familiar with the South Carolina Supreme Court rules on trust accounts?
A Yes.
Q Can you explain those rules to us?
A Yes. I know that if you have a client where the -- there's unearned money put into the -- you have to put it into

the trust account until it's earned.

Q Mr. Davis, you've been practicing law for how many years?

A I guess ten total.

Q Ten. And you don't -- you're not aware that you're required to have a trust account?

A I, generally speaking, have worked for other people and haven't had an account at all.

Q Because they had a trust account?

A I don't believe so. Not in -- not in every case.

Q All right. So you opened a trust account, and you put the Washingtons' funds in the trust account. Did you put the entire amount in the trust account?

A Yes.

Q Okay. Do you recall a conversation you and I had where I asked you how much Mr. Washington -- the Washingtons had paid you --

A Yes.

Q -- because they wanted me to have you disgorge those fees?

A Yes.

Q Do you recall telling me that you did not know how much they paid you?

A Off the top of my head, I did not.

Q Do you recall the conversation that we had where I asked you to take a couple of days and look over your records, and get back to me?

A Yes.
Q Do you recall telling me when I contacted you again that you still did not know?
A I don't know that I had had an opportunity to go through my records at the time, I don't --
Q Do you --
A -- have any staff or anything --
Q You don't have any staff?
A No.
Q Do you recall telling me that your office was in a shambles because -- something about someone having moved the stuff before?
A Yes, I had -- on two occasions, someone came in to supposedly clean the office without my knowledge, and moved things around, and eventually -- I've changed offices so that that won't happen again.
Q All right. So when did you move the funds from your trust account to your general account?
A I haven't.
Q You have not?
A No, they're still in a trust account.
Q Mr. Davis, let me advise you at this point or remind you that you're under oath in a Federal Court.
A And my funds are in a trust account, I've got also a statement here if you care to see it.

MR. COOPER: May I approach the witness, Your Honor?

THE COURT: Yes.

BY MR. COOPER:

Q Mr. Davis, do you recall in one of those conversations that we had that you told me that you had spent some of the money?

A I had to get a transcript, and I paid the filing fee.

Q This is --

A Also purchased a Chapter 11 Best Case, but the funds are still there.

Q This is dated June 30th of 2015, where are the records from prior to the filing of the bankruptcy all the way through the time that you were relieved as counsel?

A I have to get that, but I've provided this to Ms. Barr, which -- who asked me for it after you filed your motion.

Q You provided that to the U.S. Trustee's Office?

A Yes.

Q You provided all of those records?

A No, I provided the --

Q That one document?

A (No verbal response)

Q Could you provide to the U.S. Trustee's Office, or to me, records from the time that you received the funds from the Washingtons to date?

A (No verbal response)

Q Is that a yes?
A Yes.
Q Okay. Mr. Davis, let me ask you just straight forward, if you transferred some of those funds to your general account, you need to tell us now.
A They were initially in the general account, I transferred them to trust.
Q They were initially in the general account?
A Right, I had to open a trust account.
Q Okay. So when they first paid, you put it in your general account, and then you opened up a trust account because you didn't have one?
A Yeah.
Q And you transferred the funds over to the trust account?
A Yes.
Q When did you transfer them back to the general account?
A They're not in the general account, they're in the trust account.
Q So besides not having a trust account for all those years, and not being familiar with these rules and regulations, are you aware that failure to place Chapter 11 funds and expenses in a trust account, and then applying to the Court prior to being able to transfer those so-called earned fees, you must apply to the Court first before you can transfer those fees over?

A Yes.
Q And the U.S. Trustee has to be able to look at your application, and the Court look at your application. Are you aware of what needs to be in that application?
A Uh, not off the top of my head, but I'm going -- I intend -- unless I'm order to disgorge my fees, I intend to look at a previous example of a application to use as a template when I file it.
Q Okay. While you're doing that, let me inform you that you have to put to the tenth of the hour everything that you have done. Isn't it a little late to file that application? You've had -- you've had months since you have been excused as counsel to file the application.
A Yes, okay.
Q Are you familiar with the South Carolina Courts TJN, Incorporated case?
A No.
Q Let me help you with that. That involves a Chapter 11 which the Court ruled that -- along with many other courts, including the U.S. Supreme Court that -- and the Fourth Circuit, that if you receive funds in a Chapter 11 case, you have to put those in your trust account, you have to apply to the Court to be able to move those funds from your trust account to your general account because they're not earned until the Court says they're earned.

A Yes.
Q You're not -- you are not familiar with that?
A No, I'm aware that -- that the application has to be filed to -- to receive the money.
Q Do you have malpractice insurance?
A No.
Q You do not?
A No.

MR. COOPER: Just one second, Your Honor.

THE COURT: All right.

BY MR. COOPER:
Q Mr. Davis, do you have the contract -- or did you have a contract with the Washingtons to represent them?
A Yes.
Q Do you have a copy of that contract?
A No, I think it was in your file.
Q Can you get -- can you get -- can you get that for me?
A I gave you his file, so --
Q Okay. It's in the file?
A Should be.
Q Speaking of the file, do you recall when you were relieved of counsel by the Court?
A Yes.
Q Do you remember the date?
A Um, April 8th maybe, somewhere in there.

Q It was sometime in April. Did you offer to turn that file back over to the Washingtons or their new lawyer?
A Uh, when you contacted me about it, yes.
Q Okay. So I had to send a staff member from Greenville to your office in Columbia to pick up the file, make a three-hour round trip, is that correct?
A I don't suppose you had to but, yes, you did.
Q How else would we get the file?
A We could have met somewhere or -- if you were coming to Columbia for some reason, you could have picked it up. I'm sure there are other possibilities, but --

MR. COOPER: No further questions, Your Honor.

THE COURT: Okay. Mr. Davis, you've been subject to direct examination. Ordinarily you would have an opportunity to --

MR. DAVIS: Cross-examine my --

THE COURT: -- if you were represented by counsel to have cross-examination, but you'll also be able to respond in any fashion. I'll let you make a decision about how you want to proceed with any kind of response or clarification that you might want to make. I don't know if, at this point, you know how you want to proceed, but I would give you an opportunity now or later to present any evidence that you want to present, and to clarify anything that you've said.

Do you know how you want to proceed?

MR. DAVIS: When you say later, what --

THE COURT: Today. We're going to finish this up today, I hope.

MR. DAVIS: Could I have five minutes, please?

THE COURT: You want to think about how -- you want to think about whether you want to make a statement now, or --

MR. DAVIS: Oh, you're -- just a statement from the stand while --

THE COURT: Right. At -- I mean how we'll proceed is Mr. Cooper has the burden here as the movant, he's called you as his first witness. I presume he has other witnesses and other documents. And --

MR. DAVIS: Um, if it pleases the Court, I'd be happy to let him go ahead with his witnesses, and just make a statement in general.

THE COURT: All right. I'll -- I'll let you, as part of any response you want to make to the motion, return to the stand.

MR. DAVIS: Thank you, Your Honor.

THE COURT: All right. Thank you, you may step down.

Mr. Cooper?

MR. COOPER: Your Honor, I call Gary Washington to the stand.

THE COURT: Mr. Washington, if you would come forward to be sworn, please, sir.

COURTROOM DEPUTY: Raise your right hand. State your full name.

MR. WASHINGTON: Gary Allen Washington.

GARY WASHINGTON, DEBTOR, SWORN

DIRECT EXAMINATION

BY MR. COOPER:

Q Mr. Washington, state your full name and address for the Court.

A Gary Allen Washington, 1324 Furman Drive, Sumter, South Carolina 2-9 --

Q And you're married?

A I am, yes.

Q And your wife's name is?

A Michele Washington.

Q She's present in the courtroom?

A Yes, sir.

Q And she's a joint debtor in your Chapter 11 case?

A She is.

Q Can you tell the Court how you came about meeting your former counsel, Jonathan Davis?

A Yes. I had a -- a sequester from the Federal Government in that a couple of my contracts were shut down in the sense of funding. We actually had the contract at Fort Jackson and Shaw Air Force Base, and they withheld work because of the financing for the Federal Government. So I went to Community Bank and

talked with them about working out a payment plan or something that would help me maintain where I was at without going into really losing my properties. And they came back to me and said that they were willing to talk with me, and they wanted me to come and talk with them in reference an agreement that I had with the City of Columbia.

So the City of Columbia met with me a few times, and they said they wanted me to pay back about 150, $160,000 on a loan. And that I could not do, I was making small payments on it.

And, therefore, they told me that they were going to get with Community Bank, and they were going to go ahead and get an appraisal, which I have that copy of their appraisal, and they were going to move forward to foreclose.

And then what I did is I spoke with a couple of attorneys, and I ended up looking online. I spoke to one or two people from Moss Associates, which I previously had a case with. And then I contacted Mr. Davis. We met. He said that I needed to bring some money to him, and that he would be able to take my case, and that he was -- his -- one of his very good friends just took over for Linda Barr's office, an attorney, and he was quite good friends with that individual, that he understood how -- what I need to be done. And that I would move forward with him, and he would go ahead and give me a contract.

So he printed out a document, I filled most of it out, I asked him a couple of questions about taking some classes online, my wife and myself, so that we could have the training of financial stability. We did that.

And then from there, he took my case on.

Q So Mr. Davis told you that he had a friend in the U.S. Trustee's Office?

A Yes.

Q And what relevance would that have?

A That he would be able to get opportunities to meet with that person or to talk about my case, that he would be able to get, I would say, the ability to get assistance from that individual so that he could handle my case. And we went round and round, I think it was the person that was -- I think he retired, but I don't know who -- what his name is, but this individual's a fairly younger person, took over. And that individual -- he said that they knew each other pretty well, that he had other attorneys he could talk with, and that he would be able to get the assistance he needed, and we can move forward.

So I said let's go ahead and do what we need to do to keep my buildings. And that's what we did.

Q So did -- he never, at any point, expressed to you that he should not take the case because he had not ever done a Chapter 11 case?

A No, he told me that he's done many cases, but Chapter 11 cases, he said he had to order some special software. That was the gist of it. But he never told me that he did not ever practice a Chapter 11.

Q Do you recall the name of the -- his friend in the U.S. Trustee's Office?

A I could find out. This -- um --

Q So it was a male?

A Yes, it was a male.

Q Tim Stack?

A Yes, I believe it is, yes.

Q Okay. I've known him for many years, he's a very honorable person.

But I guess what you're saying is that Mr. Davis was huffing a bit in telling you that he had friends in the U.S. Trustee's Office that could help him guide you through this Chapter 11 case, is that -- was that your interpretation?

A Yes, and that he would make sure that -- that I would be able to secure the facilities. So that if I just followed the instructions, bring him some money, and then we would move forward from there.

Q And did he -- you had mentioned that he said he had other lawyers that could help him guide through a Chapter 11?

A Yes, it was a lady that he said that he was in contact with. I'm not sure, but I think she's in -- maybe Greer, I'm

not positive. But a lady that practices Chapter 11.
Q What about Charleston? Did he mention Charleston?
A Yes, he talked about a few different attorneys that he knew. But he said he would be able to get information from them on how to proceed, but I was really -- with a clear understanding that based on my situation with the Government contracts, and based on the package that I had put together as far as me trying to make amends, that if I went into Chapter 11, that we would be able to get through it, that I would be able to maintain my facilities.
Q How many meetings did Mr. Davis have with you before the petition was filed?
A Two.
Q Did he explain to you what the United States Trustee guidelines were?
A No. He met with my wife and myself, he received some money from me, I gave him some paperwork, and then he said he would get back with me. No, he did not.
Q And you said he did meet with your wife?
A He did, yeah.
Q Was that at his office?
A That was his office, two -- two or three occasions. Then she went to go see him in his office with money.
Q Did you find out what the United States guidelines were at a later point?

A Ms. Barr, I think, gave me a e-mail or a reference. Someone gave me some of the information, it was a document that I had to receive.

Q Did Mr. Davis explain to you and your wife prior to filing the petition that you would have to open a special bank account?

A Yes. Not Mr. Davis, but Ms. Barr.

Q Okay.

A Three different accounts.

Q Called a debtor in possession account.

A D-P-I-S, yeah.

Q Did he explain to you that all funds coming from your household or into your household must go into that DIP account, and all expenses must be paid out of that DIP account?

A Yes.

Q Did he explain it or did --

A No, no, not -- not him. I think it was a person that was it was referred to me at the bank, but also I believe at the meeting we had, or I swore in at that meeting, but not Mr. Davis.

Q Okay. Perhaps Julie Smoak may have given you some information, and Ms. Barr, of course?

A Yes.

Q Okay. But Mr. Davis didn't give you that information.

A No, sir.

Q Did Mr. Davis tell you that he would have to file insurance reports showing that all property of the estate was insured?
A No.
Q Did he tell you that he would have to file the one-time filing report stating that he had, in fact, prepared the bank account and insurance reports?
A No.
Q You heard that from the U.S. Trustee's Office?
A I knew that he had called me sometimes when they had called him, but, no, not from Mr. Davis.
Q Did you and your wife help him put together the petition and schedules?
A No.
Q Did you meet with him to sign?
A Yes, and I gave information to him.
Q Okay.
A And then he was going to give it back to me to review, but I think he signed my name once and submitted it.
Q You think he signed your name to a document filed with the Court?
A Yes, I believe so because he said we need to get it turned in, and I'm not sure which one it was, but I could look at the documents.
Q Okay. Did Mr. Davis discuss with you that you would have

-- you and your wife would have to pay quarterly fees to the U.S. Trustee's Office?

A No.

Q You heard about that later.

A Yes, and then I would get a bill.

Q You heard that from who?

A Ms. Barr.

Q Okay. When you attended the -- well, first of all, did you do a individual debtor's conference with the U.S. Trustee's Office? It was sort of an informal, maybe in their conference room.

A I remember going in, Michele and I had to show our driver's license or a Social Security card, one of the two. And we swore in, and then went over and questioned me, and told me some things I needed to do or be aware of, but not with Mr. Davis.

Q Okay. Mr. Davis was present, right?

A Yes.

Q Did Mr. Davis prepare you for the first meeting of creditors and explain what that meant?

A No.

Q He did not explain to you that creditors could appear and ask questions, and that you would have to be prepared to testify?

A No, most of the time we had any kind of meeting, we was to

together and he was going to handle everything. But I do know that based on my relationship with the Court, I knew that I needed to bring documents, but I thought I would have to give it to them, and then they would have to make an exhibit to turn it in like contracts, get them marked, but we never talked about it, or he -- I had things for him, contracts and so forth, and he said, "Well, I'll just get back with you on that." And we never did sit down and put them together, or anything like that. I thought I would need to have some of that stuff for exhibits.

Q When you -- which bank did you open your DIP account with?

A First Reliance.

Q First Reliance?

A Yes. And it's First Reliance --

Q Okay. Did they accept that you were opening up a debtor in possession account?

A Yes, when I went to Florence, I believe it was.

Q Right.

A I -- I -- someone had called on my behalf, it was an attorney, I believe. Or they gave me a list of names, and I called, and they said you can come in. And now it's in Lexington, I believe it is.

Q Did Mr. Davis explain to you that there was a list of acceptable banks, and a list of non-acceptable banks?

A No.

Q Did Mr. Davis explain to you that one of the guidelines with the U.S. Trustee's Office and the Bankruptcy Code is that you cannot sell property without filing a motion with the Court and getting permission?
A No.
Q Did he explain to you that you could not incur a debt without filing a motion with the Bankruptcy Court and obtaining permission?
A No.
Q Did he inform you that you had 180 days maximum to file a Chapter 11 plan of reorganization?
A No.
Q Did he explain what a disclosure statement was?
A No.
Q That tells about the debtor in possession or the history, and where he or she's going, and a summary of the plan, did he explain that?
A No.
Q Did he explain that there would be a -- hearings on the disclosure statement and confirmation, and that the creditors had to vote?
A Yes, we talked about me giving him some names of people that I had had a debt with, and then they would have to vote.
Q When the schedules were filed, and then later they had to be massively amended, do you recall what that was about? I

mean what -- what --
A No. I know that he had some things that he needed to talk to Ms. Linda Barr about, and then from there, he needed to get some signatures. But he needed to make sure that he did some things that they asked him to do. But, no, I didn't.
Q During the course of his representation of you, did he ever -- did you ever witness him talking -- or get on the phone and talk to another Chapter 11 lawyer?
A No.
Q Did he tell you that he had talked to another Chapter 11 lawyer?
A Yes.
Q Did he mention what advice he had gotten from that Chapter 11 lawyer?
A No, he just shared with me that he's working on my case, and would I bring some more money down.
Q Bring more money.
A To his office.
Q Do you recall who he had talked to? Did he mention that?
A No.
Q Does the name Beth Atkins, Elizabeth Atkins sound familiar?
A Yes, it does.
Q Do you think that's the person he had consulted with?
A Maybe. But I do know that it was a female.

Q And do you recall having a discussion with Mr. Davis at one point where he advised you that Ms. Atkins told him she could no longer talk to him?
A Yes, I do remember him talking with an attorney, and I believe that she stopped with their relationship as far as the business.
Q Did Mr. Davis tell you that he would have to file an application to be employed as your counsel in a Chapter 11?
A No.
Q Did he advise you that he would have to sign an affidavit stating that he had experience in Chapter 11 matters?
A No.
Q He never discussed that with you?
A No.
Q Did you ever see the application on the affidavit?
A No, not that I recall, no.
Q Did Mr. Davis explain to you that you had to provide him information under Rule 2015 about your businesses?
A He asked me for some information, but not any kind of forms or anything that he hadn't explained to me.
Q What is your opinion of the performance of Mr. Davis in your case? I assume you're speaking for your wife also, she's here in the courtroom.
A Yes. Mainly I took on the case because the amount of money and effort we put into our property is quite important to

-- to our retirement. But mainly I felt that the City of Columbia and South Carolina Community Bank made a decision to take my properties. And I went to him for, not only direction, but what do I need to do to secure the properties. So I was sort of understanding that he knew what to do, and we needed to take steps right away. Bring money, and he'd get back with me, and that's what I did.

And then -- I'm not ignorant to the knowledge that the bank wants not to talk to me, they were talking to an attorney, Mr. Nelson. So he said he had made several contacts with the South Carolina Community Bank attorney, and that he was going to be able to work some things out. So I needed to just keep him squared away with some finances and that he was going to go ahead and have a meeting.

And then him and Mr. Webb, a different attorney, met. And he went round and round, and I said we shouldn't accept the offer because I know Community Bank wants the property.

And they met in a room, came out, and said this is what you need to do. And I said, "okay, I will follow your instruction." They made an agreement on the plan. I made some phone calls to reduce my expenditures so that I could meet the monthly payment.

And then later on, they came back and said, no, we're not going to do that with you.

And I told him that I needed to give you some

documentation to substantiate the value of my property. We went round and round with that. I went and got some documents from Richland County, certified, to substantiate the market value. I went round and round that he was submitting the wrong information, and he sort of cursed me out, got a little upset. And then he had a meeting that I think that I should have been -- we had texts back and forth where the equity of the property was crucial. And he determined -- or decided to tell me the night before, around 6:45, that I needed to be in court. And we were moving a one-star at Shaw, and there's no way I could have been dismissed for that. So he came -- got a ruling, and then he would not address that again. And I said that that was a major critical piece that I needed to substantiate as far as the appraisals that we had, that the monies that I put into the building, the actual tax receipts that I've paid, and he was that, "We're going to take care of that. You need to take some of the money you're going to intend to pay me and go and get an attorney" -- not an attorney, but a -- an appraiser. And I said I'll call Mr. Crider. I called about seven or eight of the, met with them, paid him 27 hundred to come out and do an appraisal, and I was having some work going on at the same time he gave me an initial appraisal, I think it was five fifty-seven. And then -- well, a little bit less than five fifty-seven. He came back, I think, and added 12,000 to it, or something to the effect, I'm not positive. But he had given me

initial appraisal. He said whatever he can do -- because he also wanted to appraise 2917 River Drive, another property that we have. And I gave that information to Mr. Jon Davis for him to set an appointment to have this person come up and testify, or write a statement. We talked about it, I gave him several opportunities. I sent text messages, and e-mails, and said would you have him at our appraisal -- I mean at our meeting so that he could testify. And I think it was the day before, or two days before, the weekend before he called Mr. Crider and says, "Please could you come?" And Mr. Crider said, "I'm already going to be in Milwaukee or out-of-town, I don't know why you're calling me now." And he refused to come.

And the money that I spent on an appraisal was money that I feel was thrown away, but also I had done an appraisal previously for $3,000 to a Mr. -- for Mr. Boston McLean (phonetic), which I had given to Mr. Davis. And I also gave him a copy of the appraisal that the City of Columbia and South Carolina Community Bank put together. And he had all of that information, and he had the original appraisal, four different appraisals when I bought the building was 420,000. So there were several opportunities to get the fair and reasonable price of the property or market value in. And then I came in and got sort of set down by the Judge that I could not interrupt again. I was getting a little upset because I couldn't address that issue anymore, but the Judge opened the door and let me talk

for a moment. But he came back and made a ruling that there was no equity because the facts weren't before him. And Jon said that I need to sell the building.

Q All right. You had mentioned in your earlier testimony that you felt like Mr. Davis had signed your name to one of those documents. Do you have any proof of that?

A Well, he told me what he was going to do, and then he submitted it. There was never a time that I had a document prior to submission. It was after the fact that he would submit it, and he said he could submit stuff online. So there were several times I've gone to his office to meet him, the doors would be locked, he wouldn't be there, or he would say I'm not going to meet with you today, I have everything in control.

But when we come here, there was lots of papers, and just listen to what I'm saying, "This is what you need to do." And that was it, sort of hostile.

And then I had got to the point where I said I need to put something together so I can just get it all on the record of what took place from the first bankruptcy all the way through.

It's just at the point now where I've spent a lot of money for attorneys and situations where I could have been making payments on my building. From what I understand right now, that if I don't close on this loan, I will not be able to

have the properties. And now I find that he doesn't have any type of insurance, I don't know if he should've even been practicing because I have to have workers' comp and general liability, and any type of insurance when I do what I do, and it's a standard business practice. But without insurance, even if my insurance lapse, you know, now I find this out. I don't even have a recourse for -- I don't know -- I don't know what we're going to do but --

Q So to sum it up, you're unhappy with his representation of you --

A He does --

Q -- for all those reasons?

A Yes, I felt Jon actually -- I think he lied to me. I think he's lazy, and I think also that he's liable. I'm not ignorant to business, but everything he asked me to do, just like with Mr. Reed, or just like with Mr. Moss, I would follow their instructions. And when I didn't understand, I did the best I could, and then they would straighten it out. By turning in the monthly reports sent to him, I got it ideally correct. Sometimes I didn't get it correct. But I would submit it ahead of time so they can bring me in and straighten it out. And never -- he would say put the money and your package through my slot at the door, or I'll get back with you.

Q You had filed a motion earlier in the case, earlier this year to have him removed as counsel, is that correct?

THE WITNESS: Yes, sir.

THE COURT: Okay. Is there a written agreement between you and Mr. Davis?

THE WITNESS: I signed some -- yes, there is.

THE COURT: There is a written agreement. Did you and your wife sign the petition, and schedules, and statements in this case?

THE WITNESS: I would need to take a look, but I do not believe so.

THE COURT: Okay. The original petition that initiated your case --

THE WITNESS: Yes, sir.

THE COURT: -- is on the Court's docket, and it reflects by an S slash, and the typing of your name, that you did sign it. Did you and your wife sign the initial petition before it was filed?

THE WITNESS: I do not believe so. I would need to take a look, but I don't think so. I know I paid some money, and he said he was going to file some things for me, but I don't remember what the signing was for.

THE COURT: Subsequent to that, statements and schedules and various documents were filed, and then amended on at least two occasions. Did you sign those documents before they were filed with the Court?

THE WITNESS: I do not believe so. I believe -- I

know I went to his office, and signed a couple of documents. But it was after things were done because even now I have -- documents I haven't received.

THE COURT: Do you -- did you sign some of those documents after they were filed? And when I say "sign," I mean a wet signature. Did you and your wife sit down and put pen to paper to sign those documents?

THE WITNESS: I believe I signed some in his office, yes, sir.

THE COURT: You think you signed some documents.

THE WITNESS: Yes.

THE COURT: But you're unsure as to whether you signed them with -- with --

THE WITNESS: A signature.

THE COURT: -- an ink pen before or after the documents were filed with the Court.

THE WITNESS: After.

THE COURT: You believe it was after.

THE WITNESS: Yes, because he would -- I would not be able to meet with him, he had court cases, and he would submit and say, "Okay, I'll send you a copy." And I have texts for that where he would, "I'll send it to you tomorrow," or what have you. And I would get it via e-mail, or I would come in his office and sign some documents.

THE COURT: All right.

THE WITNESS: Then after -- but he wanted to make the deadlines, I believe.

THE COURT: Okay. With respect to -- you heard Mr. Davis's testimony earlier today.

THE WITNESS: Yes.

THE COURT: He indicated that initially it was at your insistence that the case was directed to -- toward having a minimum value for the real estate. Is his characterization of your direction for the case correct? Were you trying initially to have the case support a low value for the property for some reason?

THE WITNESS: No, sir, I was not.

THE COURT: Okay.

THE WITNESS: We spoke about --

THE COURT: Right.

THE WITNESS: -- doing that, but I said --

THE COURT: So you did speak about doing that?

THE WITNESS: We spoke to the point that he wanted to negotiate with Mr. Webb.

THE COURT: Okay.

THE WITNESS: And they came up with an agreement.

THE COURT: So that was later.

THE WITNESS: Yes.

THE COURT: Okay. I just wanted to clarify those several points. I -- you -- your counsel asked you some

questions, and then you gave a couple of fairly long --

THE WITNESS: Okay.

THE COURT: -- answers to those questions where not only you answered the question, but you also provided additional information. So if you'll excuse me, it can sometimes be a little confusing --

THE WITNESS: Yes, sir.

THE COURT: -- when that happens. And I just wanted to make sure that I understood correctly those particular points. So if you'll bear with me, thank you.

Mr. Cooper, before I leave you, since I asked a couple of questions which I don't always do, but which I sometimes do, did anything that I asked prompt you to have another question?

MR. COOPER: Just a couple, Your Honor.

DIRECT EXAMINATION CONTINUED

MR. COOPER:

Q Mr. Washington, you -- you really can't say for sure today when you signed those documents before they were filed, after they were filed, whether you signed the petitions, schedules. Is it true that you're basically saying I believe we signed some --

A Correct.

Q -- before they were filed, and some after? Because I wouldn't want you to put on the record something definite as,

you know, "We -- we did not sign petitions, schedules, and so forth before they were filed," only for us to find out that you did.

A Um.

Q Because you -- you know, you have to do this by memory.

A Correct.

Q But you believe that -- you had mentioned that there was at least one document, you felt, that Mr. Davis had signed your name to, and you mentioned that you felt that some documents you signed -- you and your wife signed after they were filed with the Court --

A Correct.

Q -- is that pretty much it?

MR. COOPER: That's pretty much it, Your Honor.

THE COURT: Okay. Thank you, Mr. Cooper.

MR. COOPER: Appreciate it.

THE COURT: Mr. Davis, do you have questions on cross-examination?

MR. DAVIS: Yes.

CROSS-EXAMINATION

BY MR. DAVIS:

Q Mr. Washington, you said you spoke to other attorneys about the possibility of filing a Chapter 11 for you.

A Yes.

Q Could you tell me who all those attorneys were?

A Barbara Boxer (phonetic), um --

MR. COOPER: Excuse me, Your Honor. I don't know if we're getting out of place, but I was wondering, when I examined Mr. Davis, was he going to make a statement before he cross-examines Washington, or --

THE COURT: I --

MR. COOPER: It doesn't matter to me.

THE COURT: It's -- it doesn't have any consequence to me --

MR. COOPER: Thank you.

THE COURT: -- one way or another procedurally. So I'll let him go ahead and cross-examine Mr. Washington at this point in time.

BY MR. DAVIS:

Q Sorry. Barbara Boxer. And who else?

A There was another individual on -- on Elmwood, I don't know the gentleman's name. Then there was another person in Greenville, I'm not positive of the name, but I can get their names.

Q Do they all have experience filing Chapter 11s, to your knowledge?

A Yes.

Q And when you came to me, I told you that I had not filed any Chapter 11s.

A No, you told me you were going to need to buy some

software. You didn't say that you never filed a Chapter 11, not that I'm aware of.

Q I told you that I would need the assistance of other people.

A Yes.

Q I told you that I didn't have the software on-hand to file a Chapter 11 case.

A You did tell me that you needed money so you can get that, yes.

Q All right. It's my belief that I also told you that I didn't -- have never filed a Chapter 11 case before, but do you not believe with the knowledge that I needed help to do it, and I didn't have the software to do it? Does that not indicate to you --

A For me, I think if I engaged you, that you told me, "I'm going to need money to do this, this, and this. I have these contacts, I'm going to make some things work for you. You just need to make payments to me."

And then I asked you, "Should I take some classes online for financial responsibility? I don't want to miss anything."

And then -- that was the extent of it. We didn't go into did you ever tell me that you never practiced a Chapter 11. You told me that, in fact, you wanted money for software because you didn't have the software.

Q How did you become aware of me?
A I found you online, and then also I talked to Moss & Associates. When I -- when I spoke to Moss & Associates, they told me that you are on your own, that they had nothing to do with you. And then you told me about experience you had with them, and that you were trustworthy, and that I needed to come in to see you. And I came to your office.
Q Did my web site make any mention of my experience filing a Chapter 11?
A No, I just went there for the address, I -- call you initially. Because I had called -- I think I called Moss & Associates, and then I just tracked your location down.
Q But you didn't --
A I didn't study your web site.
Q Didn't study my web site, all right. When we initially filed your case, we had to file an emergency case. Do you remember taking the documents to your wife to get her to sign them before we filed them?
A I do remember us talking about some documents, I do -- I know that I actually met with you in your office, and signed some documents, and then I believe that was a contract, and then we gave you some money.
Q Well, I'm not talking about the contract. I'm talking about before we filed the emergency filing --
A Um-hum.

Q -- you had to take the documents to your wife to get her to sign them because I needed everybody's signature on the documents before I filed them. Do you remember doing that?
A Not in an emergency filing, no. I do remember taking some documents to Michele, and I know we came in your office and signed some documents.
Q And you say that there are various documents that I filed without your signature. Is it possible that those are objections to motions that didn't require your signature?
A No. I know one you said I'm going to need to sign your name, and get it submitted because we don't have the time. But also, I was sort of adamant with you reference why are you doing anything without me looking at it, just like such a rush, you never wanted to meet with me before things -- I always get it after the fact, whether it's a motion or whether it was a document that I needed to review. Even the meeting with Mr. Webb, it was, "I'm going to take care of this for you." And I didn't think that we should have done that at the time, me, you and Mr. Webb. I said we had plenty equity in the building, there's no way they could take it. But you went on and said, "This is what we need to do."

(Pause)

THE WITNESS: Okay. Okay.

THE COURT: Can you ask him what that is, or if he knows what it is?

THE WITNESS: No, I don't. I just see some of my phone numbers.

THE COURT: You don't know what that piece of paper is?

THE WITNESS: No, it just looks like a printout of "We need" -- it's got quite a few numbers on it, my phone records. Is that what it is?

MR. DAVIS: It's a record of our text.

THE WITNESS: Oh, I have that in a better situation, yes. Okay. Maybe that's what it is, okay. Okay.

THE COURT: All right. Does he need that?

MR. DAVIS: Yes, sir.

THE COURT: Have you shown it to Mr. Cooper?

MR. COOPER: So I understand, this is just a printout of texts, but not the content of the text.

MR. DAVIS: Not the content of the text.

THE COURT: Where -- when you say "text," I'm old school, that can mean a lot of different things to me. Are you talking in my children's parlance, or are you talking in the way I think? Text -- text is something that's written down on a piece of paper.

MR. DAVIS: The --

THE COURT: Are you talking about electronic phone messages that go back and forth between people?

MR. DAVIS: Yes.

THE COURT: All right. So let's, again -- if you're going to ask Mr. Washington about that, let's -- now that Mr. Cooper has seen it, let's get him to identify that, if he can.

THE WITNESS: Okay.

(Pause)

THE WITNESS: Looks like 2012 -- I mean 2015 text messages of different months from what he said, and then what I've said.

THE COURT: Okay.

THE WITNESS: And --

THE COURT: So -- so let me make sure I understand what you're saying. You can identify that as text messages between you and Mr. Davis over some period of time, is that what I understand you to be saying?

THE WITNESS: I believe -- yes, to a degree. I can read some of this where some words that I have actually said to him, and some replies. Or maybe just what he said to me, it looks like. Or what I said to him.

THE COURT: So they're electronic messages back and forth between you and Mr. Davis?

THE WITNESS: Correct.

THE COURT: Okay. Mr. Davis, do you have some questions that you want to ask Mr. Washington about that document?

MR. DAVIS: Yes, Your Honor.

THE COURT: All right.

BY MR. DAVIS:

Q Mr. Washington, could you locate the --

THE COURT: Are you offering that into evidence?

MR. DAVIS: Yes, Your Honor. I apologize.

THE COURT: For what purpose?

MR. DAVIS: For the purpose of showing Mr. Washington's intent as to the valuation of the building.

THE COURT: His intent as to the valuation of the building.

Mr. Cooper, do you --

MR. COOPER: Your Honor, I have an objection to that. We don't really know what that document is, how it was produced, nobody's authenticating it.

It looks to Mr. Washington as if it may hold some content on communications back and forth.

I've personally reviewed it. I don't see the complete text of the communications. And Mr. Davis has given us no prior warning or notice of this, so I would object to it being introduced into evidence.

THE COURT: Mr. Davis, I'll give you an opportunity to lay a foundation for that document if you can. But somehow it's got to be authenticated. If you're -- when you offer documentary evidence in court, someone has to authenticate what it is, and the validity of it. I don't know that this is Mr.

Washington's document, so I don't know necessarily how he would authenticate it --

MR. DAVIS: Mr. Washington says he has transcripts of --

THE COURT: -- unless he has some knowledge of it.

MR. DAVIS: Mr. Washington is responsible for half of the communication, but he said he had his own transcript for text --

MR. COOPER: And we object to that, Your Honor. Mr. Davis can't introduce something that I have, or that Mr. Washington has. If he wants to ask him questions about this, I don't mind that. I'm just objecting to the introduction.

THE COURT: I'm going to sustain the objection to the introduction. You may still use the document if you choose to do so.

MR. DAVIS: The burden is -- if you've got text of your own that you'd --

MR. COOPER: No. He's, again, trying to -- he's trying to draw Mr. Washington into proving his own document.

THE COURT: Well --

MR. COOPER: In fact, I would like to take --

THE COURT: I'll sustain the objection. If you have some -- if you have questions of Mr. Washington, you may ask them. And then if you want to use anything that you have to support or contradict Mr. Washington's answer, I'll let you use

whatever documents you have to do that.

BY MR. DAVIS:

Q Mr. Washington, do you recall that the value of your building we listed on your petitions, and statements, and schedules?

A I do remember us talking about it, yes.

Q Do you recall that we had a 341 meeting where you were questioned by the U.S. Trustee's Office about a value of your building?

A Yes.

Q Do you recall that we had the effort at a settlement with Charles Webb where we spoke in the back?

A I do remember that we went round and round, and then you and him came to an agreement, and we agreed to a settlement, yes.

Q Okay. Do you remember that you wanted to make it part of that settlement that South Carolina Community Bank agreed that the value of the building was less than they had previously stated?

A No.

Q Okay. Do you recall that you sent me a text message on January 21st --

A Um-hum, go ahead.

Q The time I have is 12:43:22, in that message, you said that we had to establish that the value of the building was in

line with what you owed.
A The market value, no. I do remember us talking about it, and I wouldn't ask Richland County to come out and do another assessment. I also got some documents and brought it to you. And I also gave you appraisals. But, no --
Q Well --
A Go ahead.
Q As -- as of January 21st, you stated that we had to establish that the value of the building was in line with what you owed.
A No.
THE COURT: So is your question does he recall --
MR. DAVIS: Does he recall, yes.
THE COURT: -- that? Okay.
MR. DAVIS: All right.
BY MR. DAVIS:
Q Do you recall the first time that you sent me a message which indicated that you wanted to establish there was equity in the building?
A I remember us talking about equity in the building, correct, yes.
Q And would it surprise you to know that that was February 13th, which was after the hearing where equity was established?
A You're asking me do I remember the date, February?
Q Yes. Do you recall the date when you first told me that

you had -- believed you had equity in the building, and we needed to establish that you had equity?

A It was well before that. Before there was any meeting. The 362.

THE COURT: Well, I --

A When we first talked -- no --

THE COURT: Mr. Washington, he -- he asked you if you recalled something. So if you could just answer his question.

THE WITNESS: Okay, yes, sir.

THE COURT: Okay. Thank you.

BY MR. DAVIS:

Q So you don't recall when you first said that we needed to pursue, that there was equity?

A Yes, I remember when we first talked about it. That was somewhere like -- at the early stages when you first took the case.

Q Are you saying that it -- at the early stages when I first took the case, you said that we needed to establish there was equity?

A I'm saying that the issue was that the bank wanted to take the buildings. And we discussed equity in the building at the outset because you told me there was prongs that we needed to substantiate. You talked to somebody. You said we needed to do this or this to get some information. I remember that at the early stages.

Q Do you recall that we initially set a value of the building at $306,000?

A I remember that that is the market -- no, I gave you a document, and you took that document, and that was from the Richland County, and that is a tax assessed value. I called you on it several times. You said I've already submitted it, and I'm not going to change it. I remember that because that's when we started going round and round.

Q Okay.

MR. DAVIS: Your Honor, if I could offer my -- the document that I offer to the Court is a printout of text messages by telephone between Mr. Washington and myself. I used a software program to download it, it's --

THE COURT: All right. Now I don't want to -- I don't want to inject myself too much into this, and I don't want to tell you how to practice law.

MR. DAVIS: Yes, sir.

THE COURT: But I have sustained Mr. Cooper's objection to your offering that because it's not authenticated.

While we have relaxed rules of evidence in Bankruptcy Court sometimes, counsel from the podium, when he's not the witness, can't authenticate documents.

Now if you want to ask Mr. Washington about a specific text message, and if you want to step over to him -- you've asked him a question, you've gotten a response. If you

think there's something inconsistent with that in a document you have, you can walk over to him and ask him about that text.

Mr. Cooper --

MR. COOPER: Yes?

THE COURT: -- you're not communicating with your client standing behind Mr. Davis so that I can't see you while he's subject to cross-examination, are you?

MR. COOPER: No, Your Honor, I'm not standing behind him so you can't see.

THE COURT: Are you communicating with your client while he's on the stand?

MR. COOPER: I just pointed to him, Your Honor. I apologize.

THE COURT: I -- that is absolutely not proper, and you know that.

MR. COOPER: Your Honor, what I'm trying --

THE COURT: This is not a conference table situation.

MR. COOPER: I apologize, Your Honor. And what I was trying to do is -- for the second time, maybe the third, is get all that junk off of that counter.

THE COURT: Well, you know, when your client takes a bunch of things up, and starts refreshing his recollection by them, what he does -- one of the things he does is he probably opens up every piece of that paper to come in into court. And I'm always surprised when lawyers let their clients come up

here with box loads of files. Because it's a really bad trial strategy.

MR. COOPER: I agree, Your Honor.

THE COURT: And -- but you've already let him do it, and he's been refreshing his recollection throughout. And I'm not going to save him now by you trying to tell him to quit doing what he's already been doing, and by wiping him off the counter.

You know, frankly, if we all recall from trial advocacy class, counsel, during cross-examination -- now that the witness has refreshed his recollection -- has a right to see every piece of that. And we can spend the rest of the day with him going back and forth trying to find this.

Now, you know, I understand this is an acrimonious situation between Mr. Washington and Mr. Davis. And I thank all of you for keeping it as cordial as it's been so far. But let's not turn this into something else today.

Now, Mr. Davis, I'm not going to help you anymore with how you might go about asking the questions that you might think you need to ask. So with all of this behind us, I'm going to turn you loose on cross-examination, and you can proceed as you see fit. And I'm not going to interject myself anymore except to rule on disputes.

BY MR. DAVIS:

Q Mr. Washington, did you send a text January 21st --

A Um-hum.

THE COURT: And you need to speak up enough --

MR. DAVIS: I'm sorry.

THE COURT: -- so that it's picked up. Even though you're having this little sidebar with Mr. Washington, because all of this is recorded.

BY MR. DAVIS:

Q Could you read the text there, please?

A "We need to substantiate the value of both buildings as what is in line with what I owe that my rent rolls are complete construction adequate as protection. It would -- it would mean that I would substantiate lower loan, and could pay that after living I paid over 15 years except for economic took a dive -- economics took a dive. This is our ideal commercial property." And then --

Q What was the date on that?

A That was on January 21st, 2015. Is that right?

Q Yes.

A Okay.

Q Would you give the date and read that?

A January -- February the 13th, and that is Gary Washington (indiscernible) record of trial, Dustin must get more time to prepare." Okay.

Q This one, I'm sorry.

A Okay. Um, thirteen two fifteen. "Ticket, but you need to

follow instructions. We established the buildings for appraisals price when"

Q And that was --

A -- "when that is" yes.

Q (Indiscernible - not at microphone).

A "Appraised price." Um-hum.

Q Mr. Washington, do you recall my telling you when you filed the case that you would need to have money prepared to make adequate protection payments to South Carolina Community Bank?

A No.

Q Do you recall after we set aside you got the debtor in possession bank accounts, correct?

A Yes.

Q And one of those was for -- specifically for 1811/1813 Gervais Street (phonetic)?

A Correct.

Q Okay. Do you remember being informed that you should put the money from your rents into that building, and only use money to pay the utilities as your lease agreement, and that you should have the rest of that money on-hand?

A I do remember us talking about putting -- only paying for expenses at the building.

Q Okay. Do you remember how much money you had in the bank -- in that bank account as of February when we actually had

your 362 motion hearing?
A No, I don't.
Q Do you believe it was more than $1,000?
A I -- I can't recall.
Q Can't recall.
A Um-hum.
Q Okay.

MR. DAVIS: I have nothing further, Your Honor.

THE COURT: Mr. Cooper, anything on redirect?

MR. COOPER: Nothing, Your Honor.

THE COURT: Mr. Washington, you may step down.

Mr. Cooper, anything else?

MR. COOPER: No, Your Honor, I was just waiting on Mr. Davis to make his statement.

THE COURT: Okay. If you've -- if you're -- if that concludes your presentation of evidence, I will allow Mr. Davis to present evidence.

If -- Mr. Davis, have you decided how you want to proceed with this? Do you want to make statements in the nature of cross-examination of yourself from Mr. Cooper's direct examination? Or do you intend to, in response to Mr. Washington's case, now put on evidence with respect to what you've done in the case, and what the -- what the agreement was between you and the Washingtons?

And if so, you can return to the stand, and I'll let

you, in a narrative format, sort of give me what you would elicit on direct examination. And Mr. Cooper can cross-examine -- can cross-examine you. But one way or another, Mr. Cooper's going to have an opportunity to ask you about whatever it is that you present to the Court. So do you know how you want to go about doing that?

MR. DAVIS: I don't have a lot of evidence. I could just present a statement to the Court, and let Mr. Cooper --

THE COURT: Okay.

MR. DAVIS: -- ask me questions about it.

THE COURT: All right. Now it's noon. Are you the only witness that you have in connection with this? Or do you intend to call other witnesses? Or do you have documents that you want to present?

MR. DAVIS: Just me, Your Honor.

THE COURT: Okay. In an effort to try to get this resolved, I'll let you go ahead and take the witness stand again. And you can make the statements you want as part of your case in chief. Okay?

MR. DAVIS: Thank you, Your Honor.

THE COURT: And you're still under oath.

MR. DAVIS: Yes, Your Honor.

JONATHAN DAVIS, PREVIOUSLY SWORN

DIRECT TESTIMONY GIVEN

THE WITNESS: Your Honor, I was approached by Mr.

Washington to file a Chapter 11 as the 1811 and 1815 buildings were about to be foreclosed on. We reached an agreement. Initially he was going to pay 9,000 in attorneys' fees and the court costs. He did not end up having that much money.

In an effort to help him, I went ahead and filed his case anyway. There was error in the filing.

THE COURT: Now do you have that agreement?

THE WITNESS: I don't. I've given Mr. Cooper my file, and I --

THE COURT: So you don't -- you don't have the agreement to enter into evidence?

THE WITNESS: No, Your Honor.

THE COURT: Okay. Thank you.

THE WITNESS: I filed the emergency petition, filed the supplemental petition after that, statements and schedules. There were errors in those, I admit. Part of it, I think, is due to haste in trying to throw everything together to get -- to meet deadlines and things.

Mr. Washington's record keeping is not always the clearest, also. But we discussed the valuation of the building multiple times. He had multiple opportunities to tell me that that wasn't what he wanted, if he had changed his mind. As late as January 21st, he was still telling me that we had to establish the value of the buildings as being in line with what he owed on it.

He nearly refused what ended up being a rejected settlement agreement anyway, but he nearly refused that because he was insisting that they had to accept a lower valuation of the building. Despite my telling him that the valuation of the building didn't matter, and that if anything, it would help him to have equity.

Then he was not present for the court date that he didn't get notice of. However, as of that time, he had still told me that he needed the valuation of the building to be accepted at the lower figure. That was what South Carolina Community Bank offered, and so I didn't see that his being the -- that guideline as to what we're actually trying to accomplish, I didn't see that I had the authority, much less the ability without his presence, to offer a higher valuation.

And then once he realized that he needed equity in the building, as Your Honor was present at that hearing when he interrupted my statements, and in an effort to introduce evidence of equity.

We went on to have the motion to reconsider, which the Court denied. I believe Your Honor asked Mr. Washington during the second 362 hearing if he wanted me to be relieved as counsel, and he said no. And we proceeded from that point.

Then once he discovered for certain he was going to lose his building, or might lose his building, he filed his pro se motion to have me relieved as counsel.

I'm not saying that there was nothing in his case I could have improved on. Like I say, I informed him that I had never filed a Chapter 11 case before. I don't believe he would have found anybody else in the state to even file a case for him, in which case his building would have been sold on the Monday after we filed this emergency petition.

I attempted throughout the case to act in what I believed his direction was as to the goals he wanted to achieve. And I -- I guess that's everything that I have.

THE COURT: That's -- that's your -- okay. How much money did Mr. Washington pay you? Is the 6,850 a correct number?

THE WITNESS: That's -- I believe that's the exact number, but it may be off by less than $100.

THE COURT: Okay. And how much money do you have in your escrow account now? You -- you --

THE WITNESS: I have the balance, plus a few extra dollars is --

THE COURT: You have how much?

THE WITNESS: I've got a document --

THE COURT: You -- you and Mr. Cooper have passed back and forth the escrow account statement, but I've not seen it. So I don't know how much money is -- is -- is involved here.

THE WITNESS: $4,540 is the balance, and a few

dollars of that is extra money because (indiscernible - not at microphone).

THE COURT: Tell me that again. $4,540 of that is --

THE WITNESS: It's four thousand five hundred and forty, I believe, seven dollars of that, because it was -- the filing fee was seventeen seventeen, so that would be -- so I think $7 of that is just money that I have in there so they don't close my bank account.

THE COURT: Okay. So you've got $7 of personal money in your escrow account.

THE WITNESS: Yes, sir.

THE COURT: Okay. And then the balance of 4,540 is Mr. Washington's --

THE WITNESS: It should be 4,533.

THE COURT: -- is Mr. Washington's money.

THE WITNESS: Yes, sir.

THE COURT: $4,540, right?

THE WITNESS: Thirty-three, I believe.

THE COURT: Thirty-three. So the $7 comes off.

THE WITNESS: The balance in the account is $4,540 minus --

THE COURT: Okay.

THE WITNESS: -- the seven would be --

THE COURT: Okay.

THE WITNESS: -- 4,533.

THE COURT: Okay. And did Mr. and Mrs. Washington sign the bankruptcy petition with pen and ink --

THE WITNESS: Yes.

THE COURT: -- before the petition was filed with the Bankruptcy Court?

THE WITNESS: Yes, sir.

THE COURT: And is there a copy in the file that you turned over to Mr. Cooper --

THE WITNESS: There should be.

THE COURT: -- of the inked signature?

THE WITNESS: There -- there should be, yes, sir.

THE COURT: There should be. Was it there at the time you turned it over to Mr. Cooper?

THE WITNESS: yes, sir.

THE COURT: Okay. Later you filed schedules and statements. There's a verification in the Court's file of those schedules and statements that's signed by the debtors -- that purports to be signed by the debtors, and that's reflected by an S slash signature. Before those documents were filed with the Court, did you have their inked signature --

THE WITNESS: Yes, sir.

THE COURT: -- on those documents? Okay. You subsequently amended the schedules and statements, Mr. Cooper's asked you about that. The copy that's filed with the Court has, again, the verification by the Washingtons of their

signature.

THE WITNESS: Yes, sir.

THE COURT: Did you have an inked set of schedules before you filed that with the Court?

THE WITNESS: yes, sir.

THE COURT: And then there was --

THE WITNESS: The only --

THE COURT: -- the second amendment?

THE WITNESS: The only things that I believe that Mr. Washington may not have signed --

THE COURT: Okay. Let --

THE WITNESS: Oops, sorry.

THE COURT: Let me finish my questions, okay? There was a second set of amendments. And in the copy that's filed with the Court, there are -- there's a verification signed by the Washingtons. Before that was filed with the Court, did you have a inked signature on those documents in your file?

THE WITNESS: Yes, sir.

THE COURT: Okay. So with respect to the petition, schedules, and statements, it's your testimony that your file contains what we call wet signatures on all of those documents, and your testimony is that those wet signatures were made before the documents were filed with the Court?

THE WITNESS: Yes, sir.

THE COURT: Your testimony is that those wet

signatures were made before the documents were filed with the Court.

THE WITNESS: Yes, sir.

THE COURT: Okay. Do you have time records for the time you spent in this case? Did you maintain time records?

THE WITNESS: Probably not as detailed as I should have, but --

THE COURT: Do you maintain contemporaneous time records for your bankruptcy cases?

THE WITNESS: No, sir, not normally.

THE COURT: Not normally. Did you in this case?

THE WITNESS: No.

THE COURT: Did you keep time as you were performing services in the case?

THE WITNESS: To some extent, but probably not as detailed as I should have just because I'm not in a practice, but --

THE COURT: Do you -- do you know how much money you believe that you're owed for your services in this case?

THE WITNESS: I believe it would be more than the balance of what the Washingtons paid me.

THE COURT: Okay.

THE WITNESS: But I --

THE COURT: And do you have time records that support that?

THE WITNESS: Yes, sir.

THE COURT: Or are you going to create the time records at the time of your application?

THE WITNESS: I have some time records, and I was going to check the time -- the way the application looks, and make sure that I do everything adequately.

THE COURT: So you have some time records, but not extensive time records.

THE WITNESS: Right.

THE COURT: You don't have your file any longer. How would you estimate times for other services if you didn't maintain contemporaneous time records?

THE WITNESS: I have extensive texts and e-mails and things. I have all of the filings that I made.

THE COURT: So you would use the Court's records, and your e-mail and text records --

THE WITNESS: And my records of what I filed with the Court I have.

THE COURT: And that's how you intend to put together an application for fees for the Court. When do you anticipate filing that?

THE WITNESS: I can file it -- I've got --

THE COURT: Do -- have you thought --

THE WITNESS: I could have it by Monday.

THE COURT: Have you thought about when you're going

to file it?

THE WITNESS: I could have it by Monday if the Court --

THE COURT: I'm not --

THE WITNESS: -- would like.

THE COURT: I'm not -- I'm not trying to encourage you to do anything. I'm asking you if you have thought about when you were going to do it.

THE WITNESS: Yes, sir.

THE COURT: Okay. When -- when you thought about it, what was the date --

THE WITNESS: I had intended to try to do it before now.

THE COURT: -- when you were going to do that?

THE WITNESS: I had intended to try to do it before now, but I was out-of-town all last week for different things, and just haven't --

THE COURT: So you haven't done it so far. Do -- is there a date that you have in mind by which you intend to do that?

THE WITNESS: I'll have it done by Monday, I've got a weekend --

THE COURT: Okay, thank you. Mr. Cooper?

CROSS-EXAMINATION

BY MR. COOPER:

Q Mr. Davis, you mentioned that you felt like you had paid 6,850 -- or Washingtons had paid you $6,850.
A (No verbal response)
Q Okay. And from that would be deducted the seventeen seventeen filing fee.
A Correct.
Q Okay. That would leave $5,133, and you test --
A No.
Q Sixty-eight fifty minus seventeen seventeen; I have a calculator if you need it.
A I've got -- yeah, you're right, sixty-eight minus -- fifty-one.
Q Fifty-one thirty-three. And you stated that you --
A Did he pay me less than that then?
Q You stated you had forty-five seventy-three --
A Forty-five thirty-three.
Q Forty-five thirty-three. So where is the remainder of the fees?
A I could be incorrect in the sixty-eight fifty number.
Q Might you have spent them?
A I don't know, we had the -- we had the numbers in the e-mails that we sent back and forth, he and I.
Q Okay. You -- you testified earlier, and I just want to confirm it, that when he was -- when he first paid you -- the Washingtons first paid you, you placed those funds in your

general account.
A Yeah.
Q And then you opened up a trust account later.
A Yes.
MR. DAVIS: Okay. No further, Your Honor.
THE COURT: Just one follow-up question. Your earlier -- you earlier made a statement that you paid a transcript fee out of this money.
THE WITNESS: No, sir. I paid it, but I didn't pay it out of his money. I just paid it separate.
THE COURT: You didn't pay it out of this money, okay. I thought you indicated that you had paid --
THE WITNESS: But it's --
THE COURT: -- for the transcript out of this.
THE WITNESS: I mean it's for his account.
THE COURT: You also said that you paid for some software.
THE WITNESS: Right.
THE COURT: Did you pay for that out of this money?
THE WITNESS: No, sir.
THE COURT: Okay.
THE WITNESS: Separate.
THE COURT: So there is some discrepancy between sixty-eight fifty and the reduction of the filing fee to get down to forty-five thirty-three.

THE WITNESS: There's a discrepancy there, Your Honor. My records indicated that the forty-five thirty-three was the correct number, so I -- possibly the sixty-eight fifty is incorrect. I don't know we --

THE COURT: Okay. All right. Thank you. You may step down.

Ms. Barr?

MS. BARR: Your Honor.

THE COURT: How are you?

MS. BARR: I'm fine. And I apologize for interrupting this hearing, but I was wondering if you might give me like two or three minutes that I needs to consult with the two counsel who are here. I find myself in a quandary and I want to see if they can help me resolve it.

THE COURT: All right. I'm happy for you to do that, and I was going to actually address you before we left this morning, too, anyway. So you need five minutes or so?

MS. BARR: Yeah, I don't want to drag it out, but there is an issue that I need to make sure I discuss with the two of them before I make any statements to the Court.

THE COURT: Okay. Would you like to have the conference opened back behind the courtroom so that you can sit down and do that?

MS. BARR: If you wouldn't mind, Your Honor.

THE COURT: Would you be kind enough --

COURTROOM DEPUTY: It's open.

THE COURT: Is it open?

COURTROOM DEPUTY: Yes, it is.

THE COURT: Okay. Thank you. We'll be in recess until you let the folks know that you're ready, and I'll come back on the bench then.

MS. BARR: Thank you, Your Honor.

THE COURT: All right. Thank you.

(Recess 12:18 p.m./Reconvene 12:29 p.m.)

THE COURT: Ms. Barr?

MS. BARR: I guess it's good afternoon now, Your Honor. Linda Barr representing the United States Trustee.

I appreciate you giving me those moments to talk with counsel for both sides.

As you know, our office did not file a response to the motion. And in -- I came over here under our statutory duties of observing cases, and I am the attorney assigned to this.

But I do have my ethical duty to the Court, as well, to have candor to the Court and make sure that things are appropriately here. I heard testimony that concerned me, and so with the permission of both counsel, they have agreed that I can let Your Honor know that there are some things that I'm aware of from my duties as a attorney with the U.S. Trustee's Office in conducting the 341 meeting where Mr. Washington gave

sworn testimony.

At that, he actually testified under oath that he had reviewed the schedules and statements, and they were true and complete. We actually went through in great detail each schedule because he had prior cases. And so I asked questions regarding the differences between the prior case and the current case. He was very familiar with the differences between the two schedules.

We also discussed, in some detail, the valuation that was provided for the buildings that were provided in the schedules. And Mr. Washington testified that the amount that was in the original schedules was the correct amount.

I felt it was important for the Court to know that, and that's really all I have.

THE COURT: Okay. I had developed concern as I sat here this morning, and heard testimony concerning, first of all, the issue of the attorney fee and how it was handled, and those kinds of things. It appears, although I've not seen the documents, that it is actually now in a trust account where it should have been.

I was very concerned about the testimony concerning the signing of documents, and filing them with the Court, and the order in which those filings and signings might have taken place. And it occurred to me that before I left today that I probably should have discussion with you about whether the

United States Trustee might intend to look into some of those issues.

As you know, I have a separate duty to make referrals to the United States Attorney if I believe that there's a crime that's occurred. I most often do that through, and am most comfortable doing that through, your office since your office is housed in the same department in the Executive Branch as the U.S. Attorney's Office, and since you have a working relationship with the U.S. Attorney's Office. I'm not suggesting that I heard anything that convinces me that a crime occurred.

However, I am concerned about the filing of documents with the Court and representations to the Court that lawyers have signed copies of documents before they make filings with the Court. And to the extent that the United States Trustee might want some time to look into those matters, or any other matter that you've heard about here today, before I make a ruling, I'm always concerned that some ruling that I might make would impede or influence some investigation that might later be made. And I would want to defer ruling until any review that you might make, or any investigation that might occur from some other agency had been completed so that my -- what I do in a case doesn't interfere with that.

Is there anything that you know of at this point in time that needs to be done that would suggest that I ought not

rule at this point in time?

MS. BARR: Your Honor, in regards to the fee, and where it's being held, I believe that we have sufficient information to know what has occurred with that, particularly given some statements we had during the break.

As far as the original signatures, I do not believe any ruling you would make would affect my inquiry into those.

And so, no, Your Honor, I believe you could go forward as you deem appropriate, and that would not interfere with any review our office would undertake.

THE COURT: Well, I just -- I want to make sure that we're working in concert. Because I do have that separate duty, but most often want to have that duty satisfied by coordination with your office.

MS. BARR: And I appreciate it, Your Honor.

THE COURT: Thank you, ma'am.

MS. BARR: Thank you.

THE COURT: All right. Mr. Cooper, tell me what you're asking me to do this morning, and tie in for me the evidence that I've heard this morning that supports your request. And then I'm going to let Mr. Davis have a similar opportunity to tell me what he thinks ought to happen in the case, and what it is about the testimony that I've heard today that supports that.

Are you ready to make essentially what is a closing

statement? Or do you need some time before that happens?

MR. COOPER: I'm ready, Your Honor.

THE COURT: Thank you. All right. If you'd go ahead.

MR. COOPER: Your Honor, Mr. Davis, in his testimony on cross-examination when I was examining him, stated he was not familiar with Rule 2016, Federal Rules of Bankruptcy Procedure. He was not familiar with Rule 327 or 330 of the Code. He was not -- he had not had a trust account for however many years, he said. He stated that he had never filed a Chapter 11 before.

And I'm not trying to impede upon anyone's interest in getting involved in Chapter 11 except that when lawyers who have never filed call me, I say you may as well take your license to the ODC because you're going to lose it. This is the difference between a medical doctor treating a cold and having heart surgery. This is a specialty.

I don't think Mr. Davis understood from day one what he was doing. And my belief is under the Model Rules of Professional Conduct in the Bankruptcy Code that he had a duty to tell the Washingtons that he could not take the case because he had never filed a Chapter 11.

The fact that he had to amend 32 pages of 43 pages that he originally filed, anyone can make a mistake. We do every week in Chapter 11s and other cases. But that's a pretty

-- that's a pretty big mistake. And I think that cost the debtors time and money.

He had to amend again, of course, make substantial changes.

He did not file his 2016 disclosure statement within 30 days of the petition, which is pretty much standard in this jurisdiction and in many other jurisdictions.

He did not file the Rule 2015 statement about businesses for some time after they were due.

My belief is, and I think the record would show, that the U.S. Trustee's Office had to guide him through these things. This is not an experiment with people's lives and businesses to do a Chapter 11 when you've never done one before.

It'd be different if he had a mentor, if he was working for a law firm who had a Chapter 11 lawyer who could train him, but he doesn't.

I think Mr. Davis admitted that he had some problems within his office in his paperwork and so forth.

But, Your Honor -- and then there was a 362 train wreck, which I know as he said/she said, and you were present during all of that, Your Honor; I wasn't.

My main concern, Your Honor, is that as far as the U.S. Trustee's Office, I don't want to bring them in as witnesses, but I believe they should ask for, and I believe

this Court should ask for, the general and trust records of Mr. Davis from the time that he met the Washingtons to present to see where that money really went. Because we, to -- to this day, we don't know. He presented a June 15th, 2015 statement -- bank statement that shows that there was some 4,000 some odd dollars in there. But that doesn't really tell us what happened to the money months ago and a year ago.

And, Your Honor, the main thing that I would like to say is that as I stated in the motion, and on the record, the rules of this Court require retainers to be held by professionals in a Chapter 11 case to, quote, "be maintained in a trust account, not to be drawn upon against post petition unless the Court orders otherwise," South Carolina Local Bankruptcy Rule 2016-1.

In addition, the South Carolina Rules of Professional Conduct provide that, quote, "A lawyer shall deposit into a client trust account unearned legal fees and expenses that have been paid in advance to be withdrawn by the lawyer only as fees are earned or expenses incurred," Rule 407 South Carolina Appellate Court Rules.

And further, as Judge Waites said in a South Carolina case, "The requirements regarding retainers and the payment of compensation to attorneys employed to represent debtors in bankruptcies are not obscure or difficult to understand. In considering their importance, they should be well-known to

bankruptcy practitioners with even limited experience. The relationship between the attorney and the debtor is a trust arrangement in which the attorney holds the retainer for the client as security for the payment of future fees and constitutes the property of the client or, in Chapter 11 bankruptcy case, the estate." In Re Equipment Services, Fourth Circuit, 2002, Lamie v. U. S. Trustee, 540 U.S. 526, South -- excuse me -- U.S. Supreme Court.

We believe Mr. Davis violated all of those rules, even if the Court comes to the conclusion that it's he said/she said with all the stuff that happened. We believe that because Mr. Davis did not follow those rules under 2016 327, 330, that he should be made to -- excuse me -- to disgorge those fees in full.

THE COURT: Mr. Davis?

MR. DAVIS: Your Honor, I've admitted that I never filed a Chapter 11 case before this one. I filed this case when Mr. Washington reappeared the weekend before his building was going to be sold.

It wasn't done as an experiment with Mr. Washington's life. It was done because if I hadn't done it, he'd have lost the building then, and I was trying to help him.

I admittedly knew less than I should have to file a Chapter 11 case. However, counsel used in his motion, for instance, In Re: Kisseberth in which the Court stated that "An

attorney in a bankruptcy case has an affirmative duty to disclose fully and completely all fee arrangements."

I did disclose the fee arrangements to Mr. Washington. He actually paid me less than we had agreed on.

The filings with the Court, I had to amend. But I amended them as soon as I was aware that they were mistaken.

The Kisseberth opinion also states that the Court has the discretion to sanction the attorney, but doesn't mention the requirement to sanction the attorney.

I would ask the Court to take into consideration my admitted inexperience and my effort to assist the Washingtons.

I wasn't attempting to defraud the Court or defraud the Washingtons, or anything of that nature. I was just attempting to help someone who came to me in need.

THE COURT: Do you think you were properly equipped to handle this case?

MR. DAVIS: I needed assistance in making sure I got the right forms and things filled out. I used --

THE COURT: Well, bankruptcy isn't just about filling out the forms, though.

MR. DAVIS: I used other people's examples to do those.

I informed Mr. Washington at the first 362 motion the only thing that I -- that -- the value of the building, that we didn't need South Carolina Community Bank to agree that the

value of the building was lower. And he insisted that he needed them to. So I went forward with that.

THE COURT: Does your -- does your retainer agreement that you used in this case have any discussion about your experience or your abilities as a bankruptcy lawyer, and specifically as a Chapter 11 lawyer?

MR. DAVIS: It didn't have anything about experience as a Chapter 11 lawyer. It wasn't -- it was --

THE COURT: Did it disclose to Mr. Washington that this is your first case?

MR. DAVIS: Only indirectly. I mean --

THE COURT: And I say Mr. Washington, I mean Mr. and Ms. Washington.

MR. DAVIS: We -- I mean I basically used my previous retainer agreement and added Chapter 11.

THE COURT: That -- so that's an agreement that you use for Chapter 7 and 13 consumer cases?

MR. DAVIS: Yes, sir.

THE COURT: Okay.

MR. DAVIS: And just added Chapter 11 beside it instead of a Chapter 7/13 which are typed in there. I would think he could have inferred from that, even if I hadn't told him, that I had never filed one before.

Like I said, I don't --

THE COURT: Do you think the Rules of Professional

Responsibility require clients to make inferences? Or do they require lawyers to be very forthcoming with their clients?

MR. DAVIS: I didn't have it in the retainer agreement, but I specifically told him multiple times that I had never filed a Chapter 11.

THE COURT: Of course, he disputes that. And you find yourself now in what Mr. Cooper refers to as he said/he said situation, which is not a comfortable place for a lawyer to be when they're -- because they've been licensed by the State and they have certain privileges, and they're arguing that the client didn't understand, or maybe even you think he's misrepresenting what you told him. But certainly the way to deal with that would have been for you to protect yourself by making those disclosures in writing.

MR. DAVIS: Yes, sir.

THE COURT: Okay. Anything else that you want me to hear?

MR. DAVIS: No, sir.

THE COURT: Okay. Thank you.

Mr. Cooper, anything? You've got the burden, so I'll let you wrap it up if you want to.

MR. COOPER: Your Honor, I pretty much have stated everything that I needed to state. And we presented our case.

THE COURT: I appreciate that.

MR. COOPER: I just want the Court to understand that

I'm not 100 percent comfortable being here. I've never done this as to an attorney before. And the Washingtons are religious people, and it was a difficult decision for them.

THE COURT: Thank you. Let me make this inquiry: One thing that I want to raise before I rule is this: Mr. Washington made a reference on the stand to his having been damaged in this case by what he considers to be Mr. Davis's malpractice. His failure to perform services at the level that's required.

There are -- there are some cases about malpractice in which parties are estopped from pursuing malpractice claims once there's a ruling about fees. And I'm not -- I'm not making a ruling that anybody is or is not estopped one way or another.

However, some other judge, I suppose, if there's later a case brought for professional negligence, some other judge may be faced with whether what I do today has an impact on that.

Do you still want me to go ahead and rule today on the issue of disgorging the fees?

MR. COOPER: Your Honor, I'm familiar with the case that you're talking about. If I could take two minutes to explain that to Mr. Washington and his family, I can give you an answer.

I will say this: I would distinguish those cases --

THE COURT: And I think they can be -- perhaps can be distinguished, but it's not my -- it won't be my --

MR. COOPER: The big problem.

THE COURT: -- ruling one way or the other. So you might want to have that conversation with them. But otherwise, I'm prepared to rule here today.

MR. COOPER: Okay. Can I have two minutes to explain?

THE COURT: Yes, sir.

MR. COOPER: Thank you.

THE COURT: You all -- well, I'll let y'all step out. And I'm going to just stay right here on the bench.

(Recess 12:49 p.m./Reconvene 12:53 p.m.)

MR. COOPER: Your Honor, very briefly. I'm in a bit of a quagmire. If you were to say that Mr. Davis has to give back all the fees, then I think that would be an exception to the malpractice. But I don't know what you're going to say, or how you're going to rule.

That being the case, perhaps we should delay the ruling, have Mr. Washington have the opportunity -- he's already spoke with some attorneys. He would have the opportunity to present them this quagmire, this dilemma, and determine how they would like him to proceed.

THE COURT: I don't want to interfere with anyone's rights.

MR. COOPER: Second of all --

THE COURT: That's why I raised the issue.

MR. COOPER: Yeah, and I -- I appreciate it. And I am familiar with those cases.

Second of all, I don't know how we're going to go beyond that because it seems like you're going to have to make a ruling of some type. But you're right, and we appreciate your bringing it up. And I want to give him the opportunity to talk to an expert in that field about how they feel.

THE COURT: All right. Would you -- do you think -- I can take this under advisement, and let you inform the Court by a pleading filed with the Court asking that the Court issue its ruling, or that the Court not grant relief in connection with the hearing today.

Do you think that that can all happen within the next ten days, or do you --

MR. COOPER: Absolutely.

THE COURT: -- need some more time?

MR. COOPER: Absolutely.

THE COURT: Well, here's what I'm going to do now. I'm going to take the matter under advisement. I am not going to rule in the next ten days -- or I'm not going to rule until at least ten days from now unless I receive from you, as Mr. Washington's counsel, an indication that he's made a decision that he does or doesn't want me to rule in the case, and let

him get some independent counsel with respect to those issues.

And then if he asks me not to rule, of course we'll just close this matter. If he asks me to rule, I'll do so. Or, at the conclusion of ten days, if I haven't heard anything one way or the other, I'll begin preparing a ruling, and I'll put that on the docket as quickly as I've finished with it.

MR. COOPER: Thank you.

THE COURT: All right? Fair enough? All right. That's -- that's the conclusion of our hearing this morning, and the matter's under advisement. Thank you very much.

MR. COOPER: Thank you, Your Honor.

(Whereupon, at 12:56 p.m., the hearing was adjourned.)

CERTIFICATE OF TRANSCRIBER

I, KAREN HARTMANN, a certified Electronic Court Transcriber, certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



Karen Hartmann, AAERT CET**D0475 Date: September 1, 2015

TRANSCRIPTS PLUS, INC.

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H

What were the two loans secured with and approved loans for to CPI?
How much was each loan from the bank and the loan from the City of Columbia?
Who was paid for each loan and how much, the terms?
Where did the City of Columbia get the funds to loan? Is that agency that gave funds to City of Columbia made aware of the loss of over 200k by Attorney Tamika Issac incompetence? Or that the City of Columbia City Council let the funds be lost because of their relationship with Tamika Issac and not pursue reimbursement or charges against her law firm? What evidence suggest they knew and did nothing to recover funds?
What was total loan?
What were loans secured by?

The confirmed bankruptcy case (Chapter 11, Case No: 11-00625-dd) was handled by which United States Trustee? What Judge handled this case? Was that case dismissed and how/why did it get confirmed? Is that action by the Judge being forced to confirm the case that the misconduct would stay sealed and other cases would be in question start the vendetta?

What was the secured loan amount on 1811 & 1815 Gervais Street property at confirmed case in each case? What was the debt amount owned by CPI to the bank at the time of confirmation?

How much equity based on the two loans provided was left in property when, at the close of case? Who nullified the City of Columbia's loan as secured property and why?

Did the confirmed plan reflect the loan monthly payment based on the single loan amount owed the bank? How much was that and what was the loan terms?

How much was the loan payment? Did the ust consent based on plan confirmation?

When did the Linda know the amount owed on property and the difference that amount was unsecured amount owed to the City? In others words, did the bank have adequate protection in order for the Judge to confirm the case going into the second case and why?

Did ust fail to alert Court that the banks stated amount owned to bank was much less that the market value of the property? Did she have a duty to alert the bank?

Did ust fail to alert court that the market value stated by bank was erroneous? Did the ust alert the South Carolina Attorney Office of fraud suspicion based on her facts concerning bank? Did she have a duty to report fraud as it relates to the Estate protection in bankruptcy?

Did ust fail to alert Court that the bank had appraisals of market value much higher than what was stated by the bank thereby exposing their fraud to deceive the Court?

Did debtor alert ust of error in market value? What is the evidence of that fact? Why did the ust refuse to investigate or at least bring to light the fact of equity in property to the court?

Did ust alert Court of known erroneous information put forth as facts by the bank were criminal activity?

The Supreme Court of South Carolina
OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

Ericka M. Williams
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January 25, 2017

PERSONAL AND CONFIDENTIAL

Gary Washington
Carolina Procurement Institute, Inc.
1324 Furman Drive
Sumter, SC 29154

RE: Lawyer: Jonathan L.B. Davis, Esquire
Case Number: 16-DE-L-0412

Dear Mr. Washington:

The Supreme Court of South Carolina has appointed several attorneys across the state to act as Attorneys to Assist Disciplinary Counsel in connection with complaints received by the Commission on Lawyer Conduct. You are hereby notified that the above-referenced matter has been assigned to one of these Attorneys to Assist Disciplinary Counsel.

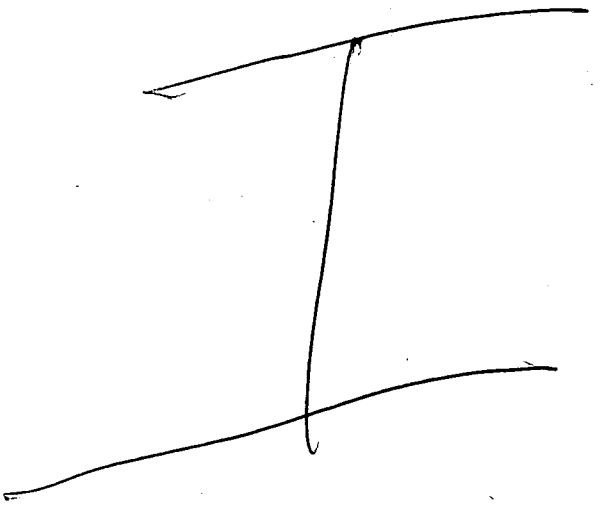
In all likelihood, you will be contacted by this Attorney to Assist to furnish information concerning the above-referenced matter. If you are so contacted, your cooperation with the Attorney to Assist in this regard is requested.

Sincerely,

Ericka M. Williams

EMW/

Attack



RE: CPR

- Robert B. Cooper (rbcooper@[redacted].com)
- 9/30/97 at 11:23 PM

Jr.

- [redacted]

Bob

Message body

Jack - I am in agreement on the issue as you frame, and will proceed, as such. See you in Aust

Robert B. Cooper
Chief Patent Counsel, Apple
Phone: (408) 974-3385
Fax: (408) 974-8600
rbcooper@apple.com

Very good comment. I have already paid Substitute Service and Ace Cou one more between a office to talk that out about. Mark!

Jack

*** Sent from my BLTN web browser. ***

Robert B. Cooper (rbcooper@[redacted].com) wrote:

Jack - I want to assure that you are very frank regarding. I have spoken to all lawyers involved a few days. What do you feel that you will have funds available for future payment? My thought here that Ace I appeal to the federal district court would result in that court "ordering" the trial right outside ruling. Much of that after now, because it undermines the leverage we have against all other courts and judges. I have a plan to file an opposition to the motion to dismiss, which is due on Oct. 6th. Ace's motion to dismiss is based on "lack of standing" in the 9th Circuit and properties. The opposing would be that CPR has paid its amounts on the date and therefore has an equitable interest as the properties the plaintiff asserted by the federal bankruptcy estate(s) and I expect that Judge Duncan will deny that claim. Therefore, we need to be prepared for the all appellate issues that refer to the 9th Circuit Court of Appeals. Ace will appeal to the 9th Circuit. Ace will lose. Then we will have to decide what the next step is. I agree we should go for it. I want to be sure, however, about "it". We must in that course of posting property "seized by bankruptcy" the thing. What we are up to at the 9th? Attorney and we thought, in particular how I case handed to the Fourth Circuit

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

Gary Allen Washington
Michele Anne Washington
1324 Furman Drive
Sumter SC 29154

Debtors

CASE NO: 14-05589-dd
CHAPTER : 11

NOTICE OF MOTION/APPLICATION AND OPPORTUNITY FOR HEARING

NOTICE

TAKE NOTICE that Gary Allen Washington and Michele Anne Washington (Movants) filed a **MOTION FOR RECONSIDERATION.**

A copy of the motion accompanies this notice.

TAKE FURTHER NOTICE that any response, return and/or objection to this application, should be filed with the Clerk of the Bankruptcy Court no later than fourteen (14) days from service of motion/application and a copy simultaneously served on all parties in interest.

TAKE FURTHER NOTICE that no hearing will be held on this application unless a response, return and/or objection is timely filed and served, in which case the Court will conduct a hearing on **December 29, 2015 at 10:30 am**, at the J. Bratton Davis U.S. Bankruptcy Courthouse, 1100 Laurel Street, Columbia, South Carolina 29201. No further notice of this hearing will be given.

Date: December 14, 2015

Robert H. Cooper, DCID 05670
THE COOPER LAW FIRM
Attorney for the Debtors
150 Milestone Way, Ste B
Greenville SC 29615
(864) 271-9911
(864) 232-5236 fax
rhcooper@thecooperlawfirm.com

FILE OBJECTION WITH:
Clerk, U.S. Bankruptcy Court
1100 Laurel Street
Columbia SC 29201

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

14-05589-dd

Chapter 11

In re:

Gary Allen Washington
Michele Anne Washington
1324 Furman Drive
Sumter, SC 29154

Debtors-in-possession

MOTION FOR RECONSIDERATION

This matter comes before the Court on the debtors' motion for reconsideration of this Court's Order vacating the "automatic stay" of 11 U.S.C. section 362 entered on February 26, 2015, and its Order denying the debtors' motion to alter or amend that Order entered April 8, 2015. The authority for such motion for reconsideration is found under Rule 60 of the Federal Rules of Civil Procedure.

MAIN REASONS FOR THIS MOTION

The debtors set forth three main reasons for this motion that are not the exclusive reasons for the motion, but which they feel assist the reader in understanding the basis for the motion for reconsideration as follows:

1. The movant, South Carolina Community Bank, misrepresented facts to the Court regarding a prior settlement that had been agreed to, and regarding the fact that, based upon documents the movant had in its possession, it continued to take the position that no equity existed in the subject property. The settlement agreement was stated on the record at the January 7, 2015, hearing, yet the movant misrepresented to the Court at the February 12, 2015 hearing that no such agreement had been rendered. The record in this regard speaks against the movant.

2. Substantial equity did exist in the subject property, based upon two formal written appraisals of the property that had been requested by the movant, South Carolina Community Bank, and which were in its possession the entire time its attorneys argued that no equity existed in the property. The movant requested and had conducted formal appraisals in 2013 and 2014 that reflected values of $425,000 and $450,000 respectively. Although, the movant stated a value of $450,000 in its motion for relief from stay and certification of facts filed on December 9, 2014, it reduced that value 43 days later to $306,300 in its second motion for relief and certification of facts filed on January 21, 2015. The debtors submit that the movant did

so to manipulate the facts and misrepresent to the Court its own knowledge and proof of the true value of the properties. The movant the debtors believe did so in order to meet their burden of proof that no equity existed in the subject properties.

3. The debtors had ineffective assistance of their prior counsel that amounted to gross negligence in the handling of their case, and in the handling of the defense of the movant's motion for relief from the automatic stay. Mr. Davis as debtors' counsel should have challenged the movant bank's value of the properties to defeat the bank's burden of proving no equity existed, and said counsel should have filed a pleading to enforce the settlement made and stated on the record at the January 7, 2015 hearing. Mr. Davis showed his incompetence further by attempting to introduce into the record at the April 6, 2015 hearing the Crider $557,000 written appraisal. Davis attempted to introduce the appraisal through the debtor, instead of subpoenaing Mr. Crider, who had conducted the appraisal.

BACKGROUND

On October 3, 2014, the debtors, Gary Allen Washington and Michele Anne Washington, filed their joint petition under chapter 11 of the United States Bankruptcy Code. The debtors' schedules filed with the Court reflect their interest in several businesses, the main one of which is a business known as "Carolina Procurement Institute, Inc." This business is the debtors' main source of income. The debtors operate this business and others from their two commercial buildings located at 1811 and 1815 Gervais Street in Columbia, South Carolina. The real property records of Richland County, South Carolina reflect that the two properties are deeded in the names of Gary and Michele Washington, the debtors in this matter. Those records also indicate that a mortgage lien is held upon those properties by South Carolina Community Bank located in Columbia, South Carolina. Gary Washington has testified in multiple hearings before this Court that the two commercial properties contain substantial equity, and are absolutely necessary to the debtors' effective reorganization. He further testified that the properties in question are located in a "HUBZone", meaning that they are located in a historically underutilized business zone. HUBZone is a Small Business Administration (SBA) program for small businesses that operate and employ people in historically underutilized business zones. This program was created as part of the Small Business Administration Reauthorization Act (Public Law 105-135). These zones are vitally important to the support and welfare of underutilized business areas that adversely affect low income families. As part of Gary Washington's certification qualification for HUBZone status, the properties located at 1811 and 1815 Gervais Street, Columbia, South Carolina absolutely must be retained.
Mr. Washington further testified in prior hearings before this Court that Carolina Procurement Institute, Inc. contracts with the federal government to relocate the non-weaponry assets of military personnel, mostly at the United States Army Base known as Fort Jackson in Columbia, South Carolina, and at the United States Air Force Base known as Shaw Air Base located in Sumter, South Carolina. Documents filed with this Court confirm Mr. Washington's statements to this effect.

11 U.S.C. section 362
(Automatic Stay)

(a) Except as provided in subsection (b) of this title, a petition filed under section 301, 302, or 303 of this title, ... operates as a stay, applicable to all entities, of ... (3) any act to obtain possession of property of the estate, or to exercise control over property of the estate.

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay-

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under section (a) of this section, if-

(A) the debtor does not have an equity in such property, and

(B) such property is not necessary to an effective reorganization;

(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay or any act under subsection (a) of this section-

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues.

MOTIONS TO VACATE AUTOMATIC STAY FILED IN THIS CASE

On December 9, 2014, attorneys for South Carolina Community Bank filed a motion for relief from the automatic stay. In that motion, the bank indicated that the value of the commercial properties was $450,000, and that the total amount of liens held against the property was $488,976.87. In its motion, the bank argued that no equity existed in the properties. On December 10, 2014, the bank filed an amended motion for relief from the automatic stay, but repeated the same value and lien amounts. On December 29, 2014, the debtors, through their now prior counsel, filed an objection to the bank's motion. A hearing was held on the bank's motion and the debtors' objection on January 7, 2015, at which the parties announced a settlement the terms of which were stated on the record. On January 21, 2015, the bank filed its second motion for relief from the automatic stay. In that second motion, the bank indicated that the value of the properties was $306,300 and the total lien amount was $369,781.72. In essence, the bank was suggesting that the value of the property had depreciated by $143,700 in 43 days. Using those figures, the bank again argued that no equity existed in the properties. On February 2, 2015, the debtors' prior counsel filed an objection to the bank's motion. The Court held a hearing on the matter on February 12, 2015, and announced at that hearing that the hearing would be considered a preliminary hearing, and continued the matter to the February 19, 2015, Court docket. At the end of the hearing on that date, the Court announced it was taking the matters under advisement, and would issue its Order at a later date. On February 26, 2015, the Court entered its Order granting the bank's motion for relief from the stay. On March 5, 2015, the debtors, through prior counsel, filed their motion to reconsider the Order granting the bank relief

from the stay. On March 12, 2015, the bank through counsel filed an objection to the debtors' motion for reconsideration. On April 6, 2015, the Court held a hearing on the debtors' motion for reconsideration and the bank's objection thereto. At the end of that hearing, the Court announced that it would take the matter under advisement, and issue an Order at a later date. On April 8, 2015, the Court entered its Order denying the debtors request for reconsideration of the Order lifting the automatic stay.

TRANSCRIPT OF HEARING HELD ON JANUARY 7, 2015

The official written transcript of the hearing held January 7, 2015, reflects the following conversations between the Court and the attorneys for both the debtors and the bank: Mr. Webb represented the bank, and Mr. Davis represented the debtors.

THE COURT: "This is 14-5589, a 362 motion of South Carolina Community Bank. I understand the parties have a settlement to announce."

MR. WEBB: "That's correct, Your Honor. Based on some information that has been provided me today by Mr. Washington's counsel, we've agreed to accept and I'll be happy to go through the terms with Your Honor, or we can"

THE COURT: "I'd like to hear them."

MR. WEBB: Okay. We're going to be willing to accept $2,600 starting March 15th."

THE COURT: "What was that amount?"

MR. WEBB: "$2,600"

THE COURT: "Um-hum."

MR. WEBB: "And then starting July 15th of 2015, it'll be $3,100. Also, Mr. Washington is willing to sign a confession of judgment for the full amount that is owed. I don't have that exact figure right now. It's in the neighborhood of $340,000. And then the parties are going to work together to try and get one of the, there's two buildings, Your Honor. And the parties are going to work together to get one of the two buildings sold, if at all possible."

THE COURT: "All right. And if the payments are not made, what happens?"

MR. WEBB: "We would try and foreclose, at that point. And then we would have the confession of judgment, as well."

THE COURT: "So the agreement is that if the payments aren't made, that you would be entitled to relief from the stay."

MR. WEBB: "That's."

THE COURT: "Is that right?"

MR. WEBB: "Correct."

MR. DAVIS: "Correct, Your Honor."

UNIDENTIFIED SPEAKER: "Yes, sir."

THE COURT: "And so the payments are $2,600 a month beginning March 15th, due the 15th of each month."

MR. WEBB: "That's correct."

THE COURT: "And are late when? After the 15th, or is there a grace period?"

MR. WEBB: "There's a 20 day grace period."

The above conversation is stated verbatim in lines 1 through 25 of page 3 of the transcript, and continue non-stop to page 4 of the transcript in lines 1-14. The conversation continues as reflected on page 5 of the transcript, lines 1-13 as follows:

THE COURT: "20 days. All right. And then you'll have March, April, May, and June, paying that, and then in July, those payments step up to $3,100."

MR. WEBB: "That's correct, Your Honor."

THE COURT: "Continuing that if they aren't made, that payment, you'd be entitled to relief from stay after 20 days. And Mr. Washington is going to sign a confession of judgment for the whole amount due. Now, what's the impact on that confession of judgment if Mr. Washington's Chapter 11 goes forward and there's some additional plan? How does that impact that confession of judgment? He may get a discharge"

MR. WEBB: "Right."

The transcript reflects that the contents of the remainder of the conversation had between the Court and the attorneys for the parties mainly concerned the sale of one of the two buildings, and how that might affect the remaining balance of the bank's loan. The Court ended the conversation by reminding the parties that the settlement when reduced to writing had to be served on creditors under Rule 4001(d) of the Federal Rules of Bankruptcy Procedure.

TRANSCRIPT OF HEARING HELD ON FEBRUARY 12, 2015

The transcript of record of the hearing held by the Court on February 12, 2015 reflects that the first 12 2/3 pages involve a discussion on the record regarding whether or not the parties had a settlement agreement at the January 7, 2015 hearing. Mr. Davis, attorney representing the debtors, and the Court were trying to recall what was stated at that hearing. Mr. Davis assured the Court that the parties not only did have an agreed upon settlement, but that the terms of that settlement were announced at the hearing on the record. The confusion appeared to stem from the fact that no one had an actual transcript of the January 7, 2015 hearing in hand. Mr. Webb, who represented the movant in the "362" action, and who took part in negotiating the settlement at the January 7 hearing with a bank officer present, was not present at the February 12, 2015 hearing. Mr. Weston, who also represents the movant, and is employed by the same law firm as Mr. Webb was not present at the January 7 hearing, and tried to convince the Court that there was no agreement or settlement. The transcript of the January 7 hearing clearly reflects that there was an agreed upon settlement, and that the terms were clearly stated on the record at the hearing. Moreover, Mr. Davis informed the Court that the movant tried to change the terms of the settlement after the January 7 hearing in spite of the fact that the settlement terms had been stated on the record at the hearing. At the February 12 hearing, Mr. Davis informed the Court that the agreed upon terms of the parties' agreement were that the debtors would commence monthly payments, sell the 1811 Gervais Street building and not the land under it, and that Washington would sign a confession of judgment, yet as Davis stated on the record on February 12, the movant later demanded additional terms that included the following: That the debtors sell the land located at 1811 Gervais Street, and that Washington assign CPI, Inc's government contracts to the movant lender. The debtors' position in this motion for reconsideration is that the movant misled the Court at the February 12 hearing, regarding the terms of the settlement stated on the record at the January 7 hearing, and that this is grounds for the Court to reconsider its Orders and that the Court should reverse those Orders as they pertain to the lifting of the stay and the denial of the debtors' motion for reconsideration of the lift stay.

The transcript of the February 12, 2015 hearing also indicates that the movant admitted via its attorney, Mr. Weston that it had served the debtors at the wrong address. Mr. Weston appears to admit on the record, and Mr. Davis confirmed on the record that the debtors' address is 1324 Furman Drive, but that the movant mailed its motion to 1354 Furman Drive. See discussion on page 10 of transcript at the bottom of the page. See also page 11, lines 10-12, that reflect as follows:

THE COURT: "Mr. Weston, you might want to make sure that your records are–"

MR. WESTON: "We have. It was a typo, Your Honor."

The debtors submit in this motion for reconsideration that the failure of the movant to properly serve them denied them of their due process rights under the law. Further, they submit that the movant, having continued forward with its lift stay action, knowing it had not properly served the debtors, prejudiced the debtors. The transcript of the February 12 hearing, pages 15 and 16 reflect the movant's attorney, Mr. Weston addressing the past problems between the

movant lender, and the debtors. This in spite of the fact that the debtors, who were not present at the hearing, whose attorney, Mr. Davis informing the Court that the debtors were not aware of the hearing, and with the movant's attorney having admitted that notice of the hearing had been sent by the movant to the wrong address. The debtors assert in this motion for reconsideration that the above-stated facts as addressed on the record in the transcript of the February 12 hearing are grounds for reconsideration of the Court's Orders Lifting Stay and denial of reconsideration of same.

On page 17 of the transcript of the February 12, 2015 hearing, an interesting discussion progressed between the Court and the movant's attorney. See page 17, line 5-17 as follows:

THE COURT: "–of $306,000 (referring to the movant's value of the properties from an earlier discussion on the record). And you set forth just shy of $370,000 is the amount of your lien. So that's–that's what you've proposed as the certified facts on this issue of equity which goes hand-in-hand with whether you're adequately protected–"

MR. WESTON: "Correct, Your Honor."

THE COURT: "–or not."

MR. WESTON: "We believe there's no equity in the property."

THE COURT: "If there were lots of equity in the property, even if you're not getting paid, you're probably adequately protected. Even–and I know bankers don't view it that way, but that's the way judge's view things.

APPRAISALS OF THE PROPERTIES LOCATED AT 1811 AND 1815 GERVAIS STREET

APPRAISAL NUMBER ONE: THE ROSEN APPRAISAL
$425,000

Rosen Appraisal Associates, 1717 Laurel Street, Columbia, SC 29201. On January 16, 2013, Rosen Appraisal Associates submitted to South Carolina Community Bank at its request a formal appraisal of the properties located at 1811 and 1815 Gervais Street, Columbia, SC. In its cover letter attached to the appraisal, the appraisers stated the following: "At your request, we have inspected and evaluated for appraisal the 19,732 square feet of land improved with a 4,910 square foot office building (1815 Gervais Street) and a 1,176 square foot office building (1811 Gervais Street) located on the north side of Gervais Street, Columbia, Richland County, South Carolina. It is shown on Richland County Tax Map 11406, in Block 16, as Lots 19 and 20. The purpose of this appraisal is to estimate the market value of the fee simple interest of the subject property." See paragraph 1 of the cover letter dated January 22, 2013. "As a result of the investigation, the analysis of the data collected and the appraisers' general knowledge of real estate valuation, it is concluded that the market value of the fee simple interest of the subject property, as described in the report to follow, as of January 16, 2013, is:

" FOUR HUNDRED TWENTY FIVE THOUSAND DOLLARS"
" $425,000"

See paragraph 3 of the cover letter. The letter is signed on page two by Toby M. Brooks and Joseph B. Rosen, both including under each of their signatures that they are S.C. State Certified General Real Estate Appraisers.

APPRAISAL NUMBER TWO: THE MCKINNEY APPRAISAL
$450,000

Kennedy, Watson, Mckinney & Associates, Inc., 10 Calendar Court, Suite 200, Columbia, S.C.: On April 2, 2014, William I. McKinney, Jr. submitted to the City of Columbia and to South Carolina Community Bank at their requests a formal appraisal of the properties located at 1811 and 1815 Gervais Street, Columbia, S.C. In its cover letter attached to the appraisal, the appraiser stated the following: "At your request, an inspection has been made for the purpose of providing an indication of the as-is market value of the fee simple interest in the above-referenced property." See paragraph 1 of the cover letter. Paragraph 4 of the cover letter states as follows: "After applying the methods and techniques recommended by the Appraisal Foundation and analyzing data presented, including Assumptions, Statement of Certification and Contingent and Limiting Conditions, I estimate the market value of the fee simple interest in the subject property, as of March 14, 2014, to be":

"FOUR HUNDRED FIFTY THOUSAND ($450,000) DOLLARS"

The letter is signed by William I. McKinney, Jr., SC General Certified Appraiser.

APPRAISAL NUMBER THREE: THE CRIDER APPRAISAL: $557,000

C. Mathew Crider, MAI, SRA of the firm of Crider, Bouye, Elliott, & Goodwin, LLC, 2 Ridgeway Avenue, Greenville, SC 29607: On March 12, 2015, C. Mathew Crider submitted to Gary and Michele Washington an appraisal of the properties located at 1811 and 1815 Gervais Street, Columbia, SC. In his cover letter attached to the appraisal, the appraiser stated the following: "C. Mathew Crider inspected the above referenced property on March 5, 2015. The purpose of the appraisal/valuation analysis was to estimate the "As-Is" Fee Simple Market Value, of the subject property." See page 2 of the cover letter. On page 3 of the cover letter, the appraiser states as follows: "Based on my investigation, analysis, and conclusions, my opinion is that the estimated "As Is" Market Value of the subject property's Fee Simple Estate located at 1811 Gervais Street, Columbia, SC, containing 1,180 SF professional office building, as of March 5, 2015, subject to the General Assumptions and General Limiting Conditions is:

"ONE HUNDRED TWELVE THOUSAND DOLLARS"
"$112,000"

"Based on my investigation, analysis, and conclusions, my opinion is that the estimated "As Is" Market Value of the subject property's Fee Simple Estate located at 1815 Gervais Street, Columbia, SC, containing 4,917 SF professional office building, as of March 5, 2015, subject to

the General Assumptions and General Limiting Conditions is:

"FOUR HUNDRED FOURTY FIVE THOUSAND DOLLARS"
"$445,000"

CERTIFICATION OF FACTS OF SOUTH CAROLINA COMMUNITY BANK

In its certification of facts filed with its motion for relief from stay filed on December 9, 2014, and its amended motion filed on December 10, 2014, South Carolina Community Bank "certified" that the value of the properties located at 1811 and 1815 Gervais Street, Columbia, South Carolina, upon which it held a mortgage lien was $450,000, and that the liens held against that property totaled $488,976.87. The amount of liens stated was not a true statement on the part of the movant, and misled the Court. In its certification of facts filed with its second motion for relief from stay filed on January 21, 2015, the lender "certified" that the value of the properties was $306,300, which was $143,700 less than the lender "certified" 43 days earlier. This value was used to manipulate the truth, since by then the lender had discovered that it held the sole lien on the properties in the amount as stated in the second motion and certification of facts as $369,781.72. Had the lender certified the true value of the properties, substantial equity would be shown, and it would have failed in its burden to prove that no equity existed in the subject properties. The lender used the lower value to misrepresent to the Court that no equity existed when clearly substantial equity existed in the properties. This is grounds under Rule 60(b) for this Court to reconsider and reverse its prior Order Vacating the Stay.

INEFFECTIVE ASSISTANCE OF COUNSEL RESULTING IN GROSS MISMANAGEMENT

This Court entered its Order on September 17, 2015 denying the application and compensation of the debtors' prior counsel, Jonathan Davis, and ordering said counsel to disgorge the compensation he had already received. In that Order, the Court stated as follows: "Davis filed Debtors' chapter 11 petition October 3, 2014. Davis and the Debtors unsuccessfully contested a motion for relief from stay regarding one of Debtors' primary assets. Debtors then requested court approval to terminate Davis' employment. The Court held a hearing on the request and relieved Davis as counsel on April 23, 2015." The debtors in the present motion for reconsideration of lift stay contend that Davis acted in wilfull disregard for their due process and civil rights in the handling of their bankruptcy case. This was clearly proven in Davis testimony at a hearing on the debtors' motion for disgorgement of Davis' fees held on August 13, 2015. On cross-examination by debtors' current counsel, Davis could not answer even basic questions regarding chapter 11 rules and procedure, and admitted that he simply felt he could "fill out some forms, and obtain some help from other chapter 11 practitioners in the state, and Davis clearly admitted that he had never previously handled a single chapter 11 case. His testimony at that hearing and the hearing held on September 16, 2015, clearly reflected that Davis actions in handling the debtors' case was grossly insufficient. The record of the hearings held on February 12 and 19th of 2015 regarding Davis' defense of the debtors against the lender's motions for relief from stay indicated a gross lack of knowledge of the bankruptcy rules and code. This caused the debtors to potentially lose the most important asset they own, which are the properties for which this Court vacated its stay located at 1811 and 1815 Gervais Street, Columbi, South Carolina. As

this Court stated to Davis at its September 16, 2015 hearing on the debtor's motion for disgorgement of fees, chapter 11 and any bankruptcy case for that matter required much more than simply filling out forms. Due to Davis' gross negligence in the handling of the debtors' chapter 11 case, including his gross negligence in the handling of the defense of the motions for lifting of the stay against the debtors' properties, this Court should reconsider its Order Granting the Lifting of the Stay, and reverse said Order by reinstating the stay.

GROUNDS FOR RECONSIDERATION OF ORDER LIFTING STAY

When South Carolina Community Bank filed its first motion to vacate the "automatic stay" under 11 U.S.C. section 362 on December 9, 2014, it clearly was aware of and had in its possession the Rosen appraisal of the properties located at 1811 and 1815 Gervais Street in Columbia, South Carolina reflecting a value for the properties as of January 16, 2013, in the amount of $425,000. Likewise, the bank had in its possession the Mckinney appraisal reflecting a value for the properties as of March 14, 2014, in the amount of $450,000. Therefore, it stated in its motion and certification of facts that the value was $450,000. The bank felt free to state that value, because at the time of the filing of the motion as stated in its motion, the bank mistakenly thought that the total lien amounts were $488,976.87. Therefore, the bank felt safe in its argument that no equity existed in the properties in question. What the bank did not know at that time was that the second mortgage held by the City of Columbia was not a perfected mortgage lien against the property, because the note was executed by the Washingtons on behalf of the corporation, Carolina Procurement Institute, Inc., yet the deed was in the name of the Washingtons personally. The debt of the City of Columbia, therefore, was an unsecured debt. The sole lien against the property at the time of the bank's first motion for relief from the stay was its own in the amount of $369,781.72. By the bank's own motion and certification of facts, therefore, in reality it proved an equity cushion in the amount of $80,218.28, but for its mistaken belief that the second mortgage of the City of Columbia was perfected.

In its second motion to vacate the "automatic stay" filed January 21, 2015, the bank had discovered that it was the sole lien holder on the properties upon which it sought relief from the stay. It then realized that it could not use the $450,000 value it stated in its first motion as it would prove that substantial equity existed in the property. The bank, therefore, stated a value of $306,000 in its second motion stating that this was the value the debtors stated in their schedules. In doing so, the bank misrepresented what it knew was the true value of the properties, based upon its own two formal appraisals of which it had both knowledge and possession. This misrepresentation was motivated by the fact that had the bank used its original $450,000 value, it would not have been able to meet its burden of proof under section 362(g)(1) that no equity existed in the subject properties.

FRCP: RULE 60. RELIEF FROM A JUDGEMENT OR ORDER

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;
(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
(6) any other reason that justifies relief.

(c)(1) Timing. A motion under Rule 60(b) must be made within a reasonable time-and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(d) Other powers to Grant Relief. This rule does not limit a court's power to: (1) entertain an independent action to relieve a party from a judgment, order, or proceeding; (2) grant relief under 28 U.S.C. section 1655 to a defendant who was not personally notified of the action; or (3) set aside a judgment for fraud on the court.

ORDER GRANTING RELIEF FROM STAY ENTERED FEBRUARY 26, 2015

This Court entered its Order granting relief to South Carolina Community Bank as to the properties located at 1811 and 1815 Gervais Street, Columbia, South Carolina, in favor of that lender. In that Order, the Court stated as follows: " Creditor filed its first motion for relief from stay on December 9, 2015. Debtors objected to the motion and the Court held a hearing on the matter on January 7, 2015. At the hearing, the parties informed the Court that they had reached a settlement and announced certain terms of the settlement on the record." Page 2, lines 1-4. "The parties later informed the Court that they were unable to reduce the settlement to writing." Page 2, lines 7-8. However, nothing in the transcript of the January 7, 2015, hearing reflects that the parties announced at least at that particular hearing that they were unable to reach a settlement. Instead, the parties clearly announced the settlement and a considerable discussion occurred between the Court and the attorneys representing the parties as to the specific terms of the settlement and the consequences of any default on the part of the debtors. The Court's Order entered February 26, 2015 continues: "Creditor subsequently filed this Motion on January 21, 2015." Page 2, line 8.

The Court continues: "In its Motion, Creditor states that its loan matured March 6, 2014 and there is no equity in the property: the total amount due on the loan is $369,781.72 with interest, and the Properties are worth $306,300." Page 2, lines 9-11. The Court continues: "The Court held a preliminary hearing on the Motion on February 12, 2015. At that hearing, the Court found that the Creditor met its burden proving there is no equity in the property." Page 3, lines 3-5. Footnote number 3 assigned by the Court in its Order refers to SC LBR 4001-1(a)(1)(C) and the Court stated as follows in that footnote: "Creditor certified in its Motion that the value of the Properties is $306,000, the value which the Debtors place on the Properties in their schedules, and that the Creditor's liens total $369,781.72." The debtors submit in this motion for reconsideration that the Court failed to question the creditor as to why it had valued the

properties at $450,000 in its first motion for relief, yet valued them at $306,300 in its second motion for relief. This is a $143,700 difference in value, which could have caused the creditor to not be able to meet its burden of proving that no equity existed in the properties in question. The Court should have questioned the creditor's motivation for the greatly reduced value, including the fact that it "certified" in its first motion that the value was $450,000, yet in the second motion the creditor "certified" a value of $306,300, yet the time period between the creditor's filing of the two certifications was only 43 calendar days. Certification of facts in legal matters is at the core of a Court's understanding of those facts. The reason for the rule is to assist the Court in its duty to render a decision, and a party's misrepresentation of those facts can influence the Court's decision, including causing it to render the wrong decision. It is, therefore, the duty of the party certifying facts to be candid with the Court, and to not sway its understanding of the facts. This includes the party's duty to bring forth its true understanding of the facts it is certifying. This includes a duty on the part of the party to use facts and evidence in its possession when stating its certification, and to bring forth those facts and that evidence to the Court's attention. To do otherwise, is to commit a fraud on the Court. At the very least, the creditor's certification violated the purpose and spirit of the local rule, and in misrepresenting the facts in its certification, and to then continue to argue those misleading facts, the creditor caused the Court to render a decision that no equity existed in the properties in question, when clearly substantial equity existed in those properties as is reflected in the two formal appraisals the creditor had in its possession. See the Rosen appraisal of $425,000 and the McKinney appraisal of $450,000. The definition of the term certify means to make certain of, or attest to the certainty of an issue. There is no certainty when a party misrepresents facts in an effort to gain a more favorable legal position. For this reason, the Court should reconsider and reverse its prior Order Granting Relief from the Stay.

CONCLUSION

The net result of the above is that the movant, South Carolina Community Bank, misrepresented the value of the debtors' property in its second motion for relief from the automatic stay and in its certification of facts accompanying that motion, and it did so, because it knew it could not meet its burden of proof under section 362(g)(1) that no equity existed in the properties. Had the movant used the value of $450,000 that it correctly stated in its first motion for relief, especially since it had in its possession the $425,000 and $450,000 formal appraisals it had itself ordered and received within months of the filing of its first motion for relief, this Court would have come to a different result in its Order vacating the stay entered on February 26, 2015. Justice, therefore, demands that the Court reverse its Order vacating the stay and enter its Order reinstating that stay. The gross mismanagement of the chapter 11 case by the debtors' attorney, Mr. Davis, and his mismanagement of the defense of the bank's motion for relief from the stay the debtors submit are additional grounds for reconsideration and reversal of the stay lift. Based upon the Crider appraisal as of March 5, 2015, the value of the subject properties located at 1811 and 1815 Gervais Street, Columbia, SC is $557,000. Had Davis performed his duties as counsel for the debtors and had the movant, SC Community Bank not misled the Court regarding its misrepresented value of the properties in question, the Court could have come to no different conclusion that not only did the properties contain equity, it was quite substantial. Had the Court been presented with the true equity in the property, this would have considerably improved the

debtors' proof that the properties were necessary for an effective reorganization.

PRAYER FOR RELIEF

Having considered the above, the debtors pray for relief in this matter by the Court reconsidering its Orders dated February 26, 2015, and April 8, 2015, reversing its opinions in those Orders, and reinstating the automatic stay as to the debtors' properties located at 1811 and 1815 Gervais Street, Columbia, South Carolina. The debtors pray for any further relief as this Honorable Court deems just and proper.

Respectfully submitted

Robert H. Cooper

Robert H. Cooper, DCID #5670
Attorney for the debtors
The Cooper Law Firm
150 Milestone Way, Suite B
Greenville, S.C. 29615
864-271-9911 telephone
864-232-5236 facsimile
rhcooper@thecooperlawfirm.com

Dated this 14th day of December, 2015

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re:

Gary Allen Washington, and
Michele Anne Washington,

Debtors-in-possession

Case No. 14-05589-dd

Chapter 11

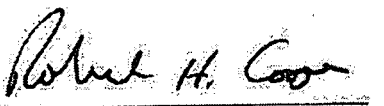
CERTIFICATE OF SERVICE

The undersigned hereby certifies that he did this day serve the document labeled "MOTION FOR RECONSIDERATION" via U.S. Mail with sufficient postage affixed thereto on the following parties: Those parties participating in the Court's CM/ECF system will receive an additional copy of the document.

Nelson S. Weston, Esquire
Richardson Plowden & Robinson, PA
1900 Barnwell Street
Columbia, SC 29201

Linda K. Barr, Esquire
Office of United States Trustee
1835 Assembly Street, Suite 953
Columbia, SC 29201

Gary and Michelle Washington
1324 Furman Drive
Sumter, SC 29154



Robert H. Cooper, DCID #5670
150 Milestone Way, Suite B
Greenville, SC 29615
864-271-9911 phone

Dated this 14th day of December, 2015

File a Motion:

14-05589-dd Gary Allen Washington and Michele Anne Washington

Type: bk	Chapter: 11 v	Office: 3 (Columbia)
Assets: y	Judge: dd	Case Flag: PlnDue, SMBUS

United States Bankruptcy Court

District of South Carolina

Notice of Electronic Filing

The following transaction was received from Robert H. Cooper entered on 12/14/2015 at 4:49 PM EST and filed on 12/14/2015

Case Name: Gary Allen Washington and Michele Anne Washington
Case Number: 14-05589-dd
Document Number: 129

Docket Text:
Motion to Reconsider Relief From Stay RE: Order Granting Motion For Relief From Stay Filed By Creditor South Carolina Community Bank.(Related Doc [25]). **Notice and service of this event are delegated pursuant to SC LBR 5075-1.** dd with Certificate of Service Filed by Robert H. Cooper of The Cooper Law Firm on behalf of Gary Allen Washington, Michele Anne Washington (related document(s)[33]). Hearing scheduled for 12/29/2015 at 10:30 AM at Columbia. Date Served 12/14/2015. Objections due by 12/28/2015. (Cooper, Robert)

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:C:\Scans\201512141641.pdf
Electronic document Stamp:
[STAMP bkecfStamp_ID=983900449 [Date=12/14/2015] [FileNumber=18233608-0] [af00cfed35457b6a89aabbbecee0648c53540a717badeae27731be60f4c11e6ab3bd7cae8ec8147e8509ecb80b8c25195b7b9ca2e9556df1c6da3b108225a752]]

14-05589-dd Notice will be electronically mailed to:

Linda Barr on behalf of U.S. Trustee US Trustee's Office
linda.k.barr@usdoj.gov

Robert H. Cooper on behalf of Debtor Gary Allen Washington
thecooperlawfirm@thecooperlawfirm.com

Robert H. Cooper on behalf of Joint Debtor Michele Anne Washington
thecooperlawfirm@thecooperlawfirm.com

B. Lindsay Crawford, III on behalf of Creditor City of Columbia
wayne@crawfordvk.com, lindsay@crawfordvk.com

Jonathan L. Davis on behalf of Attorney Jonathan Lemuel Beale Davis
jdavisesq@outlook.com

Christina R. Hunoval on behalf of Creditor Ocwen Loan Servicing, LLC
ken@hunovallaw.com;bankruptcy@hunovallaw.com

Travis E. Menk on behalf of Creditor Federal National Mortgage Association
travis.menk@brockandscott.com, scbkr@brockandscott.com;wbecf@brockandscott.com

John Timothy Stack on behalf of U.S. Trustee US Trustee's Office
John.T.Stack@usdoj.gov

Tasha B Thompson on behalf of Creditor South Carolina Department of Revenue
Tasha.thompson@dor.sc.gov

US Trustee's Office
USTPRegion04.CO.ECF@usdoj.gov

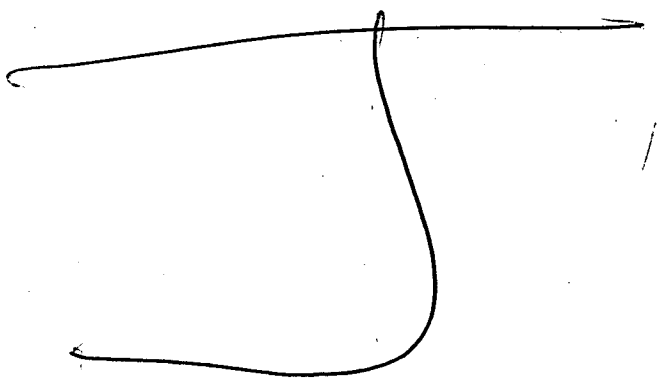
Charles J. Webb on behalf of Creditor South Carolina Community Bank
cwebb@richardsonplowden.com

S. Nelson Weston, Jr. on behalf of Creditor South Carolina Community Bank
nweston@rpcrlaw.com,
ajordan@richardsonplowden.com;ktager@richardsonplowden.com;atesh@rpcrlaw.com;shargrove@rpcrlaw.com

14-05589-dd Notice will not be electronically mailed to:

Recovery Management Systems Corporation
25 SE Second Avenue
Suite 1120
Miami, FL 33131

Attach



IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:	Case Number: 14-05589-dd
Gary Allen Washington Michele Anne Washington 1324 Furman Drive Sumter, SC 29154 Debtors-in-Possession	Chapter 11

MOTION FOR RECONSIDERATION AND JOINDER IN DEBTOR'S MOTION FOR RECONSIDERATION

COMES NOW, Carolina Procurement Institute, Inc., a wholly owned corporation of Gary Allen Washington and Michele Anne Washington ("Debtors-in-Possession"), by and through its undersigned attorney, to join in and support the Debtors-in-Possession's Motion For Reconsideration (the "Motion"), filed on December 14, 2015 [Docket No. 129]. Carolina Procurement Institute, Inc. hereby reasserts re-alleges and joins in the statements set forth in the Debtors-in-Possession's Motion.

As to the Debtors-in-Possession's Motion For Reconsideration, Carolina Procurement Institute, Inc. supports and reaffirms that

(a) the movant, South Carolina Community Bank, misrepresented facts to the Court regarding a prior settlement that had been agreed to, and regarding the fact that, based upon documents the movant had in its possession, it continued to take the position that no equity existed in the subject property. The settlement agreement was stated on the record at the January 7, 2015, hearing, yet the movant misrepresented to the Court at the February 12, 2015, hearing that no such agreement had been rendered. Carolina Procurement Institute, Inc. relies upon the record as it speaks against the movant;

(b) substantial equity did exist in the subject property, based upon two formal written appraisals of the property that had been requested by the movant, South Carolina Community Bank, and which were in its possession the entire time its attorneys argued that no equity existed in the property. Carolina Procurement Institute, Inc. supports the claim that the movant manipulated the facts and misrepresented to the Court the true value of the properties. Carolina Procurement Institute, Inc. believes that the movant did so in order to meet their burden of proof that no equity existed in the subject properties; and

(c) the debtors-in-possession had ineffective assistance of their counsel that amounted to gross negligence in handling of their case, and in handling the defense of the movant's motion for relief from the automatic stay.

Carolina Procurement Institute, Inc. prays for the relief in this matter by the Court reconsidering its Order dated February 26, 2015, and April 8, 2015, reversing its opinion in those Orders, and reinstating the automatic stay as to the debtors' properties located at 1811 and 1815 Gervais Street, Columbia, Sout Carolina. Carolina Procurement Institute, Inc. prays for any further relief as this Honorable Court deems just and proper.

Respectfully submitted

Dated: December 28, 2015
In Greenville, South Carolina

/S/ Robert A. Pohl
Robert A. Pohl, DCID#10877
Attorney for Debtor(s)
32 South Main Street #215
Greenville, SC 29601
Attorney for Carolina Procurement Institute, Inc., wholly owned subsidiary of Debtors-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE: Gary Allen Washington Michele Anne Washington 1324 Furman Drive Sumter, SC 29154 Debtors-in-Possession	)	Case Number: 14-05589-dd Chapter 11

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the MOTION FOR RECONSIDERATION AND JOINDER IN DEBTOR'S MOTION FOR RECONSIDERATION was served upon the parties listed below by depositing a copy of the same in the United States Mail, with sufficient postage annexed thereto, addressed to the parties:

Nelson S. Weston, Esquire
Richardson Plowden & Robinson, PA
1900 Barnwell Street
Columbia, SC 29201

Gary and Michele Washington
1324 Furman Drive
Sumter, SC 29154

Linda K. Barr, Esquire
Office of the United States Trustee
1835 Assembly Street, Suite 953
Columbia, SC 29201

Robert H. Cooper
The Cooper Law Firm
150 Milestone Way, Suite B
Greenville, SC 29615

Dated: December 28, 2015
In Greenville, South Carolina

/S/ Robert A. Pohl
Robert A. Pohl, DCID#10877
Attorney for Debtor(s)
32 South Main Street #215
Greenville, SC 29601
Attorney for Carolina Procurement Institute, Inc., wholly owned subsidiary of Debtors-in-Possession

We contend that **NO MATTER** is settled when that matter is based in committing fraud and lying to the court. Nor is that matter frivolous because the attorney bails on his client and decide to join the other side.

Attorney Robert Pohl set forth facts, to me, listed below of failures of UST Barr. However, because of fear of her or conspiracy he would not submit a motion to the court against UST Barr failures even after I provided him the transcripts, the appraisals and return sender letter. Once he conferred with Robert Cooper it is like he cast out his obligations to me and my company totally.

Our complaint is legal malpractice against him, unethical conduct and breach of fiduciary duty. He would not protect our interest over his.

Robert Pohl's acknowledgements these facts against United States Trustee Linda Barr:

1) I acknowledge that she (Linda Barr) did not take judicial notice of the substantial reduction in the valuation of the real estate assets in your personal bankruptcy case.

2) I acknowledge that she (Linda Barr) is obligated to uphold the bankruptcy process to ensure that there is no fraud perpetrated on the court.

3) I further acknowledge that her (Linda Barr) failure to take judicial notice of the reduction in the valuation could arguably be claimed to have resulted in the foreclosure sale of your real estate assets which were and are necessary for the reorganization of Carolina Procurement Institute, Inc.

Attorney Robert Pohl

My own attorneys were worse that the creditor in many respects. Psalms 55:11-14

There is could have been no deficiency of 187,000 by Judge Strickland for SCCB but for the failure of **Attorney Davis, Attorney Pohl, Attorney Cooper and Untied States Trustee Barr**. If any of them executed their duty to the client, debtor and the estate we would be without massive damages.

They each willfully failed their fiduciary duty. What constitutes a breach of fiduciary Duty? The fiduciary has the power – and the obligation- to act on behalf of, or for the benefit of another party in the agreed upon relationship. The fiduciary is responsible for managing and protecting property or money for another person or business. The fiduciary must set aside his or her personal interests and avoid any conflicts between these interests and the best interest of the beneficiary. This relationship of trust prevents the fiduciary from disclosing material facts and or acting in his or own best interest.

We have proven the breach of fiduciary responsibility occurred. The existence of fiduciary duty is a fact a breach of that same duty is a fact and damages to the beneficiary as a result of the breach are a fact.

Linda Barr must be held accountable.

From: Robert
Pohl [mailto:Robert@pohlpa.com]

Sent: Wednesday, January 13, 2016 9:05 AM
To: gawcpi@att.net
Cc: 'rhcooper' <rhcooper@thecooperlawfirm.com>
Subject: RE: Request Motion for Investigation

Dear Gary,

I am not convinced that Linda Barr has acted in a manner that rises to the level of prosecution as you are requesting below as it pertains to Carolina Procurement Institute, Inc. I acknowledge that she did not take judicial notice of the substantial reduction in the valuation of the real estate assets in your personal bankruptcy case, and I acknowledge that she is obligated to uphold the bankruptcy process to ensure that there is no fraud perpetrated on the court. I further acknowledge that her failure to take judicial notice of the reduction in the valuation could arguably be claimed to have resulted in the foreclosure sale of your real estate assets which were and are necessary for the reorganization of Carolina Procurement Institute, Inc. However, this is a tenuous argument for me to make as the attorney for Carolina Procurement Institute, Inc.

As you adequately state, I have taken an oath to uphold the law, and that oath also requires me to not file frivolous lawsuits. I am still evaluating the basis and evidence in this matter, and I have not made a determination as to whether or not such a motion is justified. I am trying to setup a call with Bob Cooper to discuss this matter with him to get his input.

Please keep in mind that the fair market value has now been settled at the foreclosure sale price. That is the value of the properties as of today. You may disagree with that valuation, but that is a settled matter. And that value is close to what you claimed in your schedules and that value is what the judge made his decision on at the time when he allowed the relief from the stay.

n short, at this time, I do not think the evidence supports your claim that the properties were worth considerably more than what you had listed in your schedules. Consequently, there would be no harm done by Linda Barr's failure to bring to the court's attention the decrease in valuation by the bank because as time has proven, the initial valuation declared by the bank and their appraisal was not supported in reality. That being said, if you have strong and uncontroverted evidence to support that the buildings were and are worth what you claim them to be, please provide it to me as soon as possible.

However, at this time, I am not convinced.

Sincerely,

Robert Pohl, 32 SOUTH MAIN STREET, SUITE 215, GREENVILLE, SC 29601 TEL: (864) 233-6294 CELL: (864) 361-4827 FAX: (864) 558-5291

Attach

K

RE: folliw up - material evidence for disgorgement and refinancing

People att.net

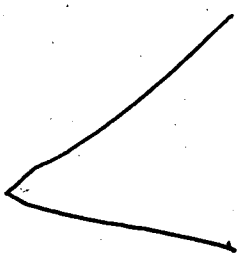
- thecooperlawfirm <rhcooper@thecooperlawfirm.com>
-
- 08/09/15 at 12:21 PM

To

- gawcpi@att.net

Hide

Message body



We don't need the transcript or Crider. All we have to do is remind the judge of that. You should write down your bullet points for me to review, but I already have the matter in hand. This is not my first hearing in Bankruptcy Court, nor the first in the presence of this judge. You have as your current attorney one of the most experienced bankruptcy counsel in the State of South Carolina, well known among colleagues, adversaries, trustees and judges. You may not agree with all that I say or do, but I can assure you, I know what I am doing. I don't mind your thoughts and input. However, as an attorney, I have a responsibility to "sift" through those thoughts and that input, and make the final decision on what to present in Court. My doctor and I made a pledge to one another years ago as follows: I will not tell him how to practice medicine, and he will not tell me how to practice law. This is based upon the old saying that "one who represents himself in law, has a fool for a client."

-----Original Message-----
From: gawcpi@att.net [mailto:gawcpi@att.net]
Sent: Sunday, August 9, 2015 4:10 AM
To: rhcooper@thecooperlawfirm.com
Subject: RE: folliw up - material evidence for disgorgement and refinancing

Bob

One major fact that would help ensure our hearing victory is the transcript that the judge rebuked John for trying to bring in the Apprasial of 557k thru me in lieu of the apprasier to authentic. If the Apprasier (Crder) was present and testified that alone would have substantiated equity of over

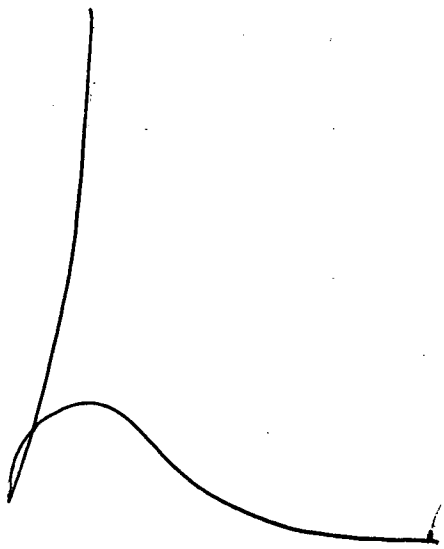
200k.

It may be of great value to request he (crider) be at our hearing to testify when John contacted him to come to hearing and why he did not come.

I would pay for his appearance.

Gary

Attach



RE: CPI

Import all set

- Erling H. Jacobi, hjacobi@thejacobilaw.com
- 2/28/2012 at 11:21 PM

To

- Jim Gill

Jim

Message body

Sure. I was at church on Christmas on Friday and just got around to reading your email. Let's talk tomorrow.

From: jgill@attorneysgill.com [mailto:jgill@attorneysgill.com]
Sent: Sunday, January 1, 2012 1:13 PM
To: Erling H. Jacobi; 'rhudson@thejacobilaw.com'; 'Jeff Rich'
Subject: Re: CPI

Very good concepts. I have already paid Schedules, Forms and A/R's. Can you meet Saturday or will it be ok for me to call you then?

Jim

*** Sent from my BlackBerry wireless device ***

Robert H. Cooper <rhcooper@[redacted].com> wrote:

Jim - I want to ensure that you are aware from overnight. I have spoken to all lawyers involved in this case. When do you feel that you will have funds available for fifteen percent? My thoughts were that since it appears to the federal district court would result in the case "taking" the bankruptcy courts ruling, which is not my view, but since it unfortunately falls down the bankruptcy process at the court's and judge. I have a plan to file an emergency motion to the 4th Circuit Court of Appeals to have the case heard on an "emergency basis" as in the two weeks or so process. Our argument would be that CPI has had the necessary use for nine, and therefore has an economic interest in the properties that should be protected by the Federal bankruptcy automatic stay. I agree that Judge Dean as well made that clear. Therefore, we need to be prepared at this all question as how does this to the 4th Circuit on an emergency basis. I am prepared to do that. I will need to have a retainer in order to do that. I've spoken to a lawyer who heard it yesterday. I intend to do that. I am sorry, as I have 76. My point is that instead of paying several current to "save money" the thing, what we just do is to it all? Correct, just my thoughts, as I presently, have cases headed to the Fourth Circuit

CPI, Inc

att.net

- Robert H. Cooper <rhcooper@thecooperlawfirm.com>
-
- 04/06/16 at 8:10 PM

To

- gawcpi@att.net

Hide

Message body

Gary: I researched further on the issue of the 200k check, and I believe I found a bank of america account number into the account in which the deposit was made. I also discussed the issue of L. Barr and J. Duncan recusing themselves after today's hearing. As you know, I also discussed with you and Rob Pohl your dispute regarding his fees. When and in what amount do you intend to make the next payment to me? Also, in what fashion

Attach

M

CITY OF COLUMBIA CITY COUNCIL
SPECIAL CALLED MEETING MINUTES
WEDNESDAY, FEBRUARY 26, 2014 – 11:00 A.M.
CITY HALL – 1737 MAIN STREET
COUNCIL CONFERENCE ROOM – 2ND FLOOR

We Are Columbia

The Columbia City Council held a Special Called Meeting on Wednesday, February 26, 2014 at City Hall, 1737 Main Street. The Honorable Mayor Stephen K. Benjamin called the meeting to order at 11:11 a.m. and the following members of Council were present: The Honorable Sam Davis, The Honorable Leona K. Plaugh, The Honorable Brian DeQuincey Newman, The Honorable Cameron A. Runyan and The Honorable Moe Baddourah. Ms. Devine was absent. Also present were Ms. Teresa B. Wilson, City Manager and Ms. Erika D. Moore, City Clerk. This meeting was advertised in accordance with the Freedom of Information Act.

Upon a motion made by Mr. Newman and seconded by Ms. Plaugh, Council voted unanimously to refer an update from the Columbia Police Department, the Police Benevolent Association and Municipal Court to the Public Safety Committee.

A motion was made by Mr. Newman to enter into Executive Session for the discussion of **Items 1** and **2**. Mr. Davis seconded the motion.

Councilor Plaugh urged the Council to only talk about those items that are not already in the public domain.

Mayor Benjamin said the discussion is limited to the items articulated on the agenda.

Mr. Kenneth E. Gaines, Esq., City Attorney said his legal advice will relate to some of those items; he has to give Council a chronology as part of that legal advice.

Mayor Benjamin asked Mr. Gaines how they should handle this discussion.

Mr. Kenneth E. Gaines, Esq., City Attorney said they should go into Executive Session and if there's something they need to discuss in public, they will. He said there has been some discussion about releasing his memo and they need to discuss that.

Councilor Plaugh said a legal opinion is appropriate to be in executive session.

Mayor Benjamin said he is perfectly fine with having the entire discussion in public, including the receipt of legal advice.

Councilor Plaugh disagreed.

DRAFT

Mr. Kenneth E. Gaines, Esq., City Attorney said he is not and he advised Council that some of his legal advice cannot be discussed publicly. He noted that he will need to give Council some background information as part of his legal advice.

EXECUTIVE SESSION

Upon a motion made by Mr. Newman and seconded by Mr. Davis, Council voted unanimously to enter into Executive Session at 11:18 a.m. for the discussion of **Item 1**.

1. Receipt of legal advice, which relates to a pending, threatened or potential claim – *This item was discussed in Executive Session. No action was taken.*

- **Council reconvened the meeting at 11:50 a.m.**

Upon a motion made by Mayor Benjamin and seconded by Mr. Baddourah, Council voted unanimously to waive attorney-client privilege.

Mr. Kenneth E. Gaines, Esq., City Attorney explained that this matter involves the following: A loan was made by the city's Commercial Revolving Loan Fund (CRLF) to a corporation called Carolina Procurement Institute Inc. and Gary and Michelle Washington. On September 9, 2004, the Loan Committee approved a loan to Carolina Procurement Institute, Inc. and the Washington's in the principal amount of $200,000. The documents in the file indicate that there was a first mortgage in the amount of $453,000. There was to be a second mortgage, security agreement, a personal guarantee of the Washington's, a promissory note and a UCC financing statement filed at the court house. The Washington's owned the commercial property that was being secured by the loan. The Washington's executed the first mortgage to the bank; there was title insurance issued to the bank; and the security agreement was signed by the corporate entity only; the personal guarantee was signed by the Washington's; the corporate entity signed the UCC financing statement. In looking at the file, we have found that the loan closed on December 22, 2004 by Councilmember Devine as the private attorney representing the borrowers. The commitment letter clearly required delivery of a second mortgage on the property at 1815 Gervais Street. The checklist, loan closing instructions and the security agreement that was signed by the corporation also contemplated collateral of the second mortgage of the property owned by the Washington's. It is unclear from the file as to why the commitment letter or the closing instructions were not adhered to; there's no documentation in the file. Angelo McBride who works for that area of the city recalled that Josephus Howard discovered this and attempted to get the Washington's to execute a second mortgage in conjunction with the promissory note that they signed. The indication is and I don't know this to be a fact; this is what I am receiving from Angelo's recall; they refused to do so. This morning Ms. Herbert advised me that she looked on the electronic file and there was a mortgage that is not executed dated June 5, 2008, four years after the loan, which is consistent with Mr. McBride's recall. We don't have any timeframes in the file that I could find. The loan became delinquent in June 2010; the city retained Stan McGuffin, Esq. with Haynsworth, Sinkler, Boyd, P.A. to bring a foreclosure action.

Mayor Benjamin asked when that occurred.

Mr. Kenneth E. Gaines, Esq., City Attorney replied around June 2010.

Mayor Benjamin asked what happened in June 2008.

Mr. Kenneth E. Gaines, Esq., City Attorney explained that Angelo McBride recalled that Mr. Howard attempted to get a second mortgage executed. The indication is that the Washington's did not agree to do that. This mortgage is unexecuted.

Councilor Plaugh asked what the terms of the original loan were.

Mr. Kenneth E. Gaines, Esq., City Attorney said $200,000; 4.75% interest rate; a commitment fee of $2,000 was to be repaid; 25 year amortization. It's all on the commitment letter.

Councilor Plaugh asked when the first payment was to be made. She said the payment was to commence on February 1, 2005. She asked why wasn't it found delinquent until 2010.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said she would have to print the payment history; it's not in the file.

Mr. Kenneth E. Gaines, Esq., City Attorney continued to explain that the principal and interest were to be paid in three hundred (300) equal monthly installments in the amount of $1,140.23 with rate adjustments every five (5) years; commencing on the eighth (8th) day of February, 2005 based on a twenty five (25) year amortization period. The loan was closed on December 22, 2004. He noted that there are two (2) letters from Mr. McGuffin dated February 2, 2011 and April 19, 2012 and they are included in the packet. Based on the suit against Carolina Procurement only, because the Washington's were in a Chapter 11 proceeding, the Washington's went into default from the suit; Mr. McGuffin obtained judgment in favor of the city in the amount of $184,345.49 plus costs, fees and interest. In the bankruptcy action the loan was listed by the debtor's attorney as unsecured; the bankruptcy plan is attached to this memo; and the city's judgment was reduced to an unsecured amount of $26,420.00. Had the second mortgage been filed, it would have been included as a secured loan and there probably would not have been any reduction. The Washington's filed two (2) bankruptcies: a Chapter 11 and a Chapter 9. Recently, they filed a motion to reopen the bankruptcy to amend the plan; the city through the Community Development Department retained Lindsay Crawford, Esq. to resist that motion, but the Bankruptcy Court did not grant the motion to reopen the bankruptcy. My understanding from Mr. Runyan this morning is that the Washington's are delinquent in their payments under the bankruptcy plan and indications are that it will be written off by the loan committee.

Mayor Benjamin asked Mr. Gaines to explain the difference between secured and unsecured creditors.

Mr. Kenneth E. Gaines, Esq., City Attorney said on a mortgage loan, secured creditors get the property back and should get their money back when the property is resold.

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Mayor Benjamin asked if we have ever been in the first position.

Mr. Kenneth E. Gaines, Esq., City Attorney said no.

Mayor Benjamin said as we try to assess what the damages might be, it's vitally important to understand how secured creditors are treated. I wish we had our arms around the numbers; a real assessment of the best case scenario.

Mr. Kenneth E. Gaines, Esq., City Attorney said that the Commercial Revolving Loan Fund has written off $157,911.29 on this loan.

Mayor Benjamin asked how much it would be if it was here and if it were a bankruptcy.

Mr. Kenneth E. Gaines, Esq., City Attorney agreed to find out.

Councilor Newman said it is clear that a mistake was made, but we probably would not have gotten that original amount of money back anyway.

Mayor Benjamin reiterated that it is vitally important that we get our numbers lined up.

Councilor Runyan asked Mr. Gaines to explain the award for $184,345.49.

Mr. Kenneth E. Gaines, Esq., City Attorney said that was not in the bankruptcy; that was the default judgment based on the promissory note, attorney fees, costs, interest, etc. They were in default and it was a judgment against the corporation.

Councilor Runyan asked if the property was in the Washington's name.

Mr. Kenneth E. Gaines, Esq., City Attorney said yes sir; they were in bankruptcy at that time, but the corporate entity had not filed bankruptcy; and I don't know if the corporate entity ever filed bankruptcy. He said indications are that the Commercial Revolving Loan Fund Committee will be writing off the amounts being paid pursuant to the bankruptcy plan. He asked Ms. Herbert if she knew about the payments the Washington's are making. He said that Mr. Runyan indicated that there was some discussion about the Commercial Revolving Loan Fund writing off that amount.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said we have already written off the difference between the balance and what the Bankruptcy Court said we could get. Today there was also a motion to investigate whether or not we have the option of having the bankruptcy order dismissed and going back after them. She noted that any payments they are making will be applied to the balance.

Mr. S. Allison Baker, Senior Assistant City Manager added that the decision that has to be made on that is whether or not we lose more money by going after him versus staying where we are now.

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Councilor Plaugh asked about the original appraisal. She wants to make sure we had an asset to begin with. She asked about the personal guarantee.

Mr. Kenneth E. Gaines, Esq., City Attorney said they are personally in bankruptcy. The appraisal as of July 22, 2010 valued the property in an as-is condition at $320,000. He said there is indication that there were supposed to be renovations to the property.

Councilor Plaugh asked if there is staff that is intimately familiar with the file.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said no more than she is. She said one of the issues they've had is that loan officers have come and gone. She said that Josephus was here through 2010; we didn't have a loan officer for six (6) months; then we got Scott Blackmon; we haven't had the consistency.

Councilor Baddourah asked if the money was given to them to buy the property.

Mr. Kenneth E. Gaines, Esq., City Attorney said they owned the property; I think it was a restructuring. He noted that at closing South Carolina Community Bank paid an appraisal fee, but he doesn't have access to that appraisal.

Councilor Plaugh asked that the request for the appraisal be put on the list.

Mr. Kenneth E. Gaines, Esq., City Attorney agreed to get the numbers tied down and to get with Mr. McGuffin.

Councilor Plaugh asked that staff review the Commercial Revolving Loan Fund plan and the conflict of interest provision.

Mayor Benjamin said it is also important to note that staff has done a good job cleaning up these old loans. He asked that we make sure we report to the respective agencies and comply with those regulations.

Councilor Runyan asked in 2008 or 2010, when the city became aware that there was a deficiency that rendered us an unsecured creditor what would be the typical action or response in that situation.

Mr. Kenneth E. Gaines, Esq., City Attorney replied that as the attorney for the city he would contact the closing attorney and ask for the execution and recording of the mortgage and if that didn't happen, if you had title insurance, make a title insurance claim against the policy; if no title insurance, you would have to go against the attorney who closed the loan and possibly their errors and omissions policy; I would ask that the deficiency be corrected to protect the client.

Councilor Runyan asked if Mr. Gaines knew why that wasn't done in this case to remedy this deficiency.

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Mr. Kenneth E. Gaines, Esq., City Attorney said according to Mr. McBride, Mr. Howard tried to make contact in 2008; there's a blank mortgage in the computer file.

Councilor Runyan asked when the statute of limitations started running.

Mr. Kenneth E. Gaines, Esq., City Attorney stated that legal malpractice is three (3) years from the date of discovery.

Councilor Runyan said in 2010 when a flagged was raised by a memo we were still within the statute of limitations.

Mr. Kenneth E. Gaines, Esq., City Attorney said yes and the statute of limitations is an affirmative defense as you and I discussed and this is for any type of legal malpractice.

Councilor Runyan said because it was not raised in 2010, are we now clearly outside of the statute of limitations.

Mr. Kenneth E. Gaines, Esq., City Attorney said I would believe we are and we have consulted with outside counsel who does legal malpractice work.

Councilor Baddourah asked how come no one realized there was a mistake. He said between staff, attorneys, court hearings and court records nobody ever saw the red flag.

Mr. Kenneth E. Gaines, Esq., City Attorney stated that Mr. McGuffin wrote a letter in 2010 and it was discovered then that there was no mortgage; I don't know what action was taken by anybody; then they filed a bankruptcy and got the unsecured creditor status; they were asked to submit a plan; and that plan was approved by the court; they made payments under the plan.

Councilor Davis asked at what point anybody communicated to Ms. Devine that the document was not in compliance, even when the bankruptcy gets filed.

Mr. Kenneth E. Gaines, Esq., City Attorney said he can't speak for Mr. McGuffin, but he believes there was communication, but he is not sure.

Mayor Benjamin insisted that it is so important that we are talking facts here. I don't want any guessing or any assumptions; either we know or we don't; if Mr. McGuffin needs to be in the room, then he needs to be in the room.

Mr. Kenneth E. Gaines, Esq., City Attorney said he asked Mr. McGuffin to be here, but he had court hearings in Charleston today.

Mayor Benjamin said that is a question for Mr. McGuffin and he can answer that with a certain degree of clarity without having to be here. He said the reason we are having this meeting and Ms. Devine is out of town and I am sure if she were in town, she would recuse herself from these conversations because there is a conflict of interest. It's because everyone

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around this table believes in accountability. It is a rare situation we find ourselves in, but nonetheless it is an important one that we try to make sure we execute the people's business; that we try to do it well; cross our t's and dot our i's; that we make sure our obligations and our responsibilities to the citizens are sacrosanct; it's precious; we take it very seriously and sometimes that means we have discussions that might not be comfortable discussions, but perhaps still need to be had. This meeting is about accountability; it's about transparency; we want to get to the bottom of this; and we want to get to the facts and figure out the most appropriate way to move forward. He said we went straight into a deep dive and he wants to make sure we are all on the same page. Let's make sure we stay close to the facts as we know them.

Councilor Plaugh requested the whole file.

Mr. Kenneth E. Gaines, Esq., City Attorney said there is some stuff in the file that cannot be released pursuant to the Freedom of Information Act (FOIA). He told Mr. Baddourah that the plan of reorganization on behalf of the Washington's was filed on September 13, 2010 and the order confirming was filed by the court on December 22, 2011.

Councilor Baddourah said from December 2011 until today there were no red flags for anybody to see that the payments were not being made; there was no way to collect the money. He asked how we could have a two (2) year gap.

Mr. Kenneth E. Gaines, Esq., City Attorney said in bankruptcy court there is an automatic stay when you file and your creditors can't come after you; you have to have the stay lifted.

Councilor Baddourah said on the policy part of it, as we try to look out for taxpayer's money, are there any more cases similar to that that we haven't looked into.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said when she got here it was in bankruptcy and the file was inactive; however, after the letter that was written to Scott in 2011, I called Stan to say that we didn't have a mortgage file, what we can do to correct it. I asked him is there any way we can go back and record the mortgage. There should be a letter in the file from 2012. She said he provided the same response we got today; if Mr. Washington will not comply with the bankruptcy, we could possibly go back and get the bankruptcy dismissed, which would then allow us time to go back in and fix what we need to get fixed.

Councilor Baddourah asked if we need to go back and investigate any other loans.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said when that issue arose two (2) years ago, she had staff go back and pull every file to make sure the mortgages had been filed and recorded. She said that Ken also asked her to check the closing attorneys and so they also pulled the names of all the closing attorneys on active loans, not inactive loans. She said her staff has gone through every file and verified that if there is supposed to be a mortgage, it's in there, it has been signed and it's actually filed.

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- **Mr. Newman left the meeting at 12:24 p.m.**

Councilor Runyan asked for a consolidated list of who has closed every commercial loan.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said she just did that yesterday.

Councilor Plaugh asked what happened when the first payment was not made; months passed; and then two (2) years passed. She wants to know under our underwriting standards when this loan technically became delinquent and what actions should have been taken to correct this. She said had that been done at that point and time there would've been other remedies available to us that are not available today. She said she asked Dana Turner to be here; she has moved on to serve us in our courts, but I don't know if she has any recall from 2004, but I want to hear what she might be able to share.

Ms. Dana D. Turner, Chief Administrative Judge said at that time the loan committee operated out of the Office of Business Opportunities (OBO) and not so much out of Community Development. She remembered the name Gary Washington, but she doesn't remember anything at all about this particular loan. She said she spoke with Ken a little bit this morning and he refreshed her a little bit about the loan itself. There should have been regular commercial loan committee meetings to discuss what was in default and what was current.

Councilor Plaugh asked if there should be minutes of those meetings.

Ms. Dana D. Turner, Chief Administrative Judge said yes. She noted that there weren't always regular around the table kind of meetings for the Commercial Revolving Loan Fund; I don't know how much of that is on file. I would think that Angelo should be able to find information. An important thing to remember too is that the purpose of the Commercial Revolving Loan Fund was to make loans that were maybe of more risk and another entity would not have made that loan; there were often loans that weren't recovered or they were written off. The purpose of the Revolving Loan Fund was to make loans to encourage businesses to develop.

Mayor Benjamin asked do you mean by nature these are more risky loans.

Ms. Dana D. Turner, Chief Administrative Judge said yes, by nature, they were more risky.

Councilor Plaugh said it was a constant thing when this program got started that you never, ever wanted to finance someone into bankruptcy. While there would be some inherent risks, the whole purpose of underwriting was to make sure you didn't put them in the realm of failure.

Ms. Dana D. Turner, Chief Administrative Judge said exactly and as you know there were formulas that the loan committee used and those that signed off on this would have looked very carefully at those to make sure the loan should be made.

Councilor Plaugh asked wouldn't you find it a little unusual that we didn't know that they weren't paying their mortgage; nobody was doing anything for four (4) or five (5) years. She asked the City Manager to pull the minutes of the Commercial Revolving Loan Fund during that period of time when the loan was made and the reports.

Ms. Teresa Wilson, City Manager asked if Ms. Livingston had anything to offer. She said many of us around this room have gotten involved on the tail end of lots of things that have transpired and Mr. Baker is here; we've all at some point or another have tried to right the ship.

Ms. Deborah Livingston, Director of the Community Development Department said in 2004 the loan officer was working out of OBO; then back to Community Development; and now it is back in OBO.

Councilor Plaugh asked who was in charge of OBO.

Ms. Dana D. Turner, Chief Administrative Judge said she thought it was Mr. Lawton.

Ms. Deborah Livingston, Director of the Community Development Department said either Mr. Lawton or Marshell Johnson.

Councilor Plaugh asked who would have been the assistant city manager over it.

Ms. Dana D. Turner, Chief Administrative Judge said she probably was.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said that all EDA loans are serviced by First Citizens; when I first got here we had a high number of delinquencies and that's why the EDA fund was suspended. I called First Citizens and asked about how we were intending to collect. I was personally told that they had stopped making calls and collecting, because that was their directive. We quickly corrected them in 2011 and asked them to call on delinquent loans just like any other loan and since then we have been working well. She noted that we pay someone to service these loans now.

Councilor Plaugh asked to see the minutes of the Commercial Revolving Loan Fund Committee; the quarterly reports filed with the EDA; the original appraisal; the servicing reports from First Citizens along with the directive not to collect.

Ms. Teresa Wilson, City Manager asked if she wants the information from back then.

Councilor Plaugh said yes.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said they did a monthly report.

Councilor Plaugh said she is sure First Citizens didn't decide not to collect without having something signed.

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Ms. Dana D. Turner, Chief Administrative Judge said it was probably a loan committee determination.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities asked if Ms. Plaugh wants the minutes from when it was approved.

Councilor Plaugh said when it came to the loan committee under the delinquency criteria. She requested a conflict of interest plan.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said the EDA has its own specific contract in addition to what we have.

Mayor Benjamin asked what EDA funding is.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said EDA is funded with EDA and CDBG. She said for this we go by EDA guidelines; CDBG money was used as a match.

Councilor Plaugh asked Ms. Herbert to verify that.

Mayor Benjamin said there are a lot of questions that have to be answered by people not in this room; there are documents you guys asked to see; policies outside of our scope, but at some point with Ken or someone he retains from outside, someone has to interface with Ms. Devine and if there are questions or inconsistencies then those need to be reported and followed up on.

Mr. Kenneth E. Gaines, Esq., City Attorney said he will follow up with the Mr. McGuffin.

Mayor Benjamin said we need to crystalize the questions that need to be answered and decide how we are going to most appropriately represent the interest of the citizens and then decide how we are going to move forward. Make sure that Ms. Devine has the chance to address each of those comments and then figure out how we are going to move forward.

Councilor Davis concurred. He said as we have learned through this discussion, some of the fringes of deep diving also suggest that there are some things that need to go back to the Economic and Community Development Committee. He said there is a gap that he can't follow from 2004 to 2010 and some of that has been corrected, but I don't have a full understanding as to how we got to this point and why. I'm not positioned to say that I totally agree with Mr. Gaines.

Mayor Benjamin said we've done a comprehensive review of the loan portfolio and we also need to look at what kind of safeguards are in place that feed up the pipeline. He said that is certainly something the committee can provide policy on as to how we deal with those things going forward. He said the difference between then and where we are now are like night and day.

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Councilor Plaugh acknowledged that we did extensive work with Tina and her staff to look at all of the underwriting and delinquency. I really think we are cleaning up old work.

Councilor Davis said there is a question with the conflict of interest policy; let's look at it and see where we are.

Councilor Runyan said it might be helpful for Council, if you all create a linear timeline with the starting point being when the loan was first made and then include all pertinent information on it with the corresponding documents.

Councilor Baddourah asked if the closing attorneys are still liable for three (3) more years because of the omissions insurance. He asked when their responsibility ends; after the loan closes or it keeps on going.

Mayor Benjamin said usually it ends at closing; however, there are obligations that remain. He said there are a couple of different questions here: execution of duties; insurance, no insurance; and the statute of limitations. The obligation does not end at closing and some of these questions are not for the closing attorney; it's for the borrower and the ability to repay the loan.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities explained that the loan officer drafts these documents and sends them to the closing attorney. She said there is nothing showing that we actually drafted a mortgage and sent it to the closing attorney. She said we send a letter to the closing attorney outlining what is being sent and what is expected back. She said there should have been some checks and balances on our end.

Ms. Dana D. Turner, Chief Administrative Judge said there were checklists back then.

Councilor Davis said he is more comfortable now with the checks and balances that are in place. He expressed concerns about the period of time these folks went without paying. He said it is a question of what the procedures were.

Councilor Plaugh said she is comfortable that the procedures have always been in place.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said they need to make sure that any correspondence received is also shared with the appropriate staff.

Councilor Baddourah said it is a good idea for us to review the process. He said the program we voted on two (2) months ago when it comes to the CRFL program and we need to redefine the steps we need to watch out for and make it clear so when a new person comes in they can follow the steps.

Mayor Benjamin asked the City Attorney to make sure the document is public and that he edits the memo.

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Mr. Kenneth E. Gaines, Esq., City Attorney said whatever was attached to his memo is subject to FOI.

Councilor Plaugh thinks that whatever is the right process that the staff feels like they need to follow, they need to do that. She said I don't want us holding you up from doing something that you feel obligated to do.

Ms. Teresa Wilson, City Manager asked if Ms. Plaugh's comments are regarding this matter.

Upon a motion made by Mr. Baddourah and seconded by Mr. Davis, Council voted unanimously to enter into Executive Session at 12:53 p.m.

2. Receipt of legal advice, which relates to a matter covered by attorney-client privilege – *This item was discussed in Executive Session. No action was taken.*

Upon a motion made by Mayor Benjamin and seconded by Ms. Plaugh, Council voted unanimously to adjourn the meeting at 1:43 p.m.

Respectfully submitted by:

Erika D. Moore
City Clerk

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Attach

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Attachment 1
Steven, Millings & Alex
A) Email #3

Friday Aug 6, 16 The State Paper

COLUMBIA RANKED NO. 3 AMONG TOP U.S. COLLEGE TOWNS

Affordable housing, the shops and eateries in the Vista, activities along the rivers and more put city high on website's list



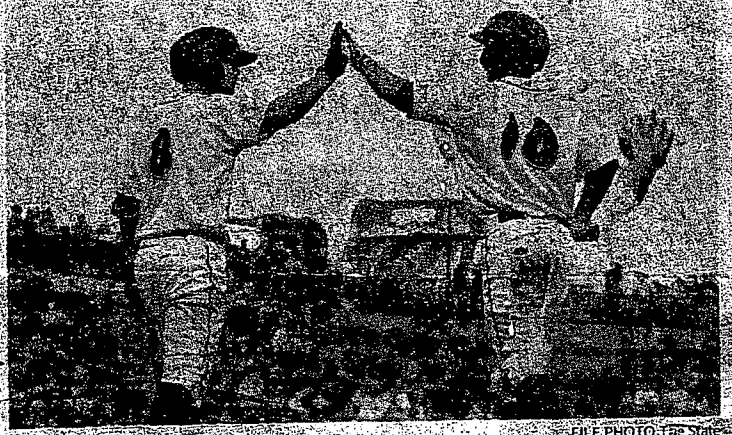
FILE PHOTO The State

HOUSING: On Main Street, The Hub at Columbia has opened its doors to residents.



FILE PHOTO The State

OUTDOOR ACTIVITIES: Rollin' on the River, a recent event at Saluda Shoals Park



FILE PHOTO The State

SPORTS: The Fireflies now play at the new Spirit Communications Park.



FILE PHOTO The State

THE VISTA: Business is booming at The Vista in Columbia.

BY JEFF WILKINSON
jwilkinson@thestate.com

Columbia is the third-best college town in the United States, according to an annual list released Thursday.

Livability.com said South Carolina's capital city blends beautifully the old and the new with a solid base of young people, particularly students, young professionals and soldiers.

"Columbia's past, present and future are deeply tied to a collection of colleges and universities, including the state's flagship school, the University of South Carolina," the website said. "Longtime residents expe-

MORE INSIDE

USC researchers aim to make archaeology come alive in new book, 1C

Off campus, students find a city filled with cultural attractions, great restaurants and things to explore."

It wasn't always so, said Matt Kennell, chief executive of City Center Partnership, which encourages and guides investment revitalization of the capital city's Main Street.

"Between Main Street, the Vista and Five Points, there are now more than 200 restaurants that are attractive to students and other young people," he said.

There's also the availability of outdoor recreation on the city's three urban rivers, a growing craft beer and distilling scene, a wide range of housing options and affordabil-

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Attach

N-1

ex. It is also [illegible] Attorney Cooper. Should I see [illegible] conversations that they were searching to take over [illegible] to work on my behalf. The most difference was the legal service because were I'd a bank Robert Lane and Jonathan Mehlig. The yes I permission the record or evidence on account to the all making the same invasion appeared on the record. More importantly it would have put the matter on a mid-put pursuit for not to get another attorney to defend me especially the chapter I am completely on I have attorney representations to enter the Court. The minute has initiation of Cooper Lane and Pohl of a fact duty was part of my money Does not and the answer were issued my [illegible] To set [illegible] Cooper Lane Pohl Mehlig and Lane Pohl Mehlig [illegible] Cooper Lane Pohl Mehlig [illegible] Cooper Lane Pohl Mehlig [illegible] Cooper

Eddye L. Lane, P.A.
2026 Assembly Street, Suite 200 (29201)
Post Office Box 294
Columbia, South Carolina 29202
Tel: (803) 400-1181
Facsimile: (803) 400-1182

Admitted In:
South Carolina
Commonwealth of Pennsylvania
U.S. District of South Carolina
U.S. Fourth Circuit of Appeals
U.S. Supreme Court

FAXED AND E-MAILED
June 3, 2016

The Honorable Joseph A. Strickland
Richland County Master-in-Equity
1701 Main Street
Columbia, South Carolina 29201

Re: Gary Washington
Chapter 13 Bankruptcy Case 16-02667-jw
Re: Order Denying Motion to Reconsider – 2008-CP-40-8887

Dear Judge Strickland:

I serve as counsel for Mr. Gary Washington in the above-referenced Chapter 13 Case. The Chapter 13 case was filed on Monday, May 30, 2016 in the United States Bankruptcy Court for the District of South Carolina.

I received a copy of the Order Denying Motion to Reconsider issued by you as the Richland County Master-in-Equity, post-petition on June 1, 2016. It is our position and that said Order is *void ab initio* pursuant to 11 U.S.C. 362(a)(1), (2), and (3). A copy of the Notice of Filing from the United States Bankruptcy Court accompanies this correspondence.

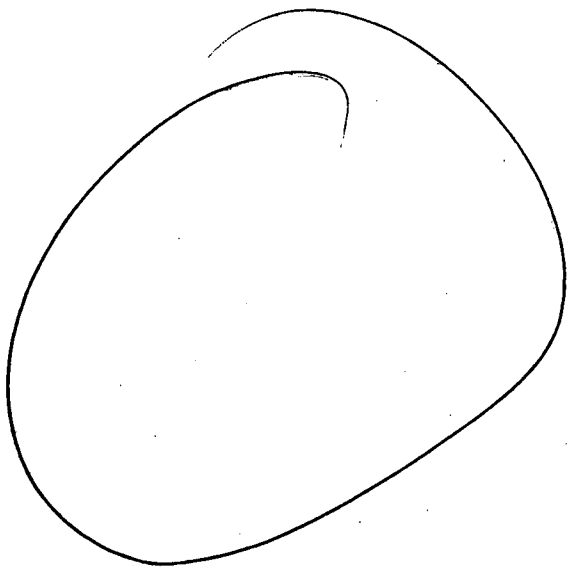
We respectfully request that the court adhere to the automatic stay of the United States Bankruptcy Court and strike or otherwise vacate the post-petition Order Denying Motion to Reconsider in this matter, and halting any appertaining actions therein. Thank you for your consideration of this information and request.

Respectfully,

Eddye L. Lane
Attorney at Law

c: Alex Wathen, Attorney at Law
Carmen Ganjehsani, Attorney at Law (City of Columbia
Travis Menk, Attorney at Law
Nelson Weston, Attorney at Law (SC Community Bank)
Charles J. Webb (SC Community Bank)
Linda K. Barr, Staff Counsel, Office of the U.S. Trustee
John T. Stack, Office of the U.S. Trustee
John Milling, Attorney at Law
William Pyatt, Attorney at Law

Attach



- [redacted]
- [redacted]

- [redacted]

Bob

[redacted]

- I was in court at Charleston on Friday and just unwound, so I just now got a chance to read

- [redacted]
Sent: March 4, 2001 1:19 AM
To: [redacted]
Subject: Re: Cert Pet

good comment. I have already paid Jonathan, Steven and Alex. Can you meet Tuesday at an office
I don't ed above. Thanks!

[redacted]

on 3/3, Cooper, "Stephen Calkins" <[redacted]> wrote:

I want to express that you are a true friend, alongside. I have spoken to all lawyers specialized in the
Ohio. In fact that they are all in their thoughts. I'm [illegible] all [illegible] some that
a appeal to the Federal district court would "complete the case" [illegible] the Bankruptcy
ruling. Which is [illegible] fact, but such a statement falls down the [illegible] practice of de
novo and [illegible]. There is also to file an appeal not to the CPI chapter 11 but even FC Government
has never filed a motion to lift the "automatic stay" as to the two [illegible] properties. Co
with would to that CPI has paid the [illegible] on the debt and therefore has no [illegible] interest in
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IN RE:	) Case No. 14-05589-DD
	) Chapter 11
GARY ALLEN WASHINGTON and	)
MICHELE ANNE WASHINGTON,	) 1100 Laurel Street
	) Columbia, South Carolina 29201
Debtors.	)
	) December 29, 2015
	) 10:31 a.m.

TRANSCRIPT OF (1) FINAL HEARING ON DISCLOSURE STATEMENT FILED BY GARY ALLEN WASHINGTON. (2) CONFIRMATION HEARING ON CHAPTER 11 SMALL BUSINESS PLAN FILED BY GARY ALLEN WASHINGTON, MICHELE ANNE WASHINGTON. (3) MOTION TO RECONSIDER RELIEF FROM STAY RE: ORDER GRANTING MOTION FOR RELIEF FROM STAY FILED BY CREDITOR SOUTH CAROLINA COMMUNITY BANK. (12/14/2015) {DOC. 129}
BEFORE HONORABLE DAVID R. DUNCAN
UNITED STATES CHIEF BANKRUPTCY JUDGE

APPEARANCES:

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(Continued)

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THE COURT: There are three matters on the calendar this morning in the case 14-5589, Gary Allen and Michele Anne Washington. Those matters are the final hearing on the disclosure statement, the confirmation of the debtors' proposed plan, and a motion to reconsider relief from stay.

Mr. Cooper, you have the burden on all of those matters. Is there an order that you'd prefer to take those matters in?

MR. COOPER: Yes, Your Honor. I'd like us to take up the matter of the reconsideration of the lift stay first.

THE COURT: All right. Is there any opposition to taking up the lift stay reconsideration?

MR. WESTON: Your Honor, Nelson Weston on behalf of South Carolina Community Bank.

We have no objection to that.

THE COURT: All right. We'll take that up first then. Let me have appearances by parties who are interested in the motion to reconsider relief.

Mr. Cooper, I note your appearance.

Mr. Weston, yours, as well.

Other parties appearing in connection with that?

MR. WESTON: I have Mr. Ben Carlton from my office, an attorney with my office.

THE COURT: Thank you.

MS. BARR: Your Honor, Linda Barr representing the

United States Trustee. We have not taken a position on the motion to reconsider.

MR. POHL: Robert Pohl on behalf of Carolina Procurement Institute, Inc.

MR. COOPER: And, Your Honor, for the record, Gary Washington, the owner of CPI, is here.

THE COURT: All right. Mr. Pohl, you filed a joinder in the motion to reconsider -- well, you filed your own motion to reconsider, and a joinder in the debtors' motion to reconsider on behalf of Carolina Procurement Institute yesterday at 6:23, and served that motion on a number of parties, according to your certificate of service, by first class mail.

Tell me how that's properly before the Court.

MR. POHL: Your Honor, I just want to express the support of the current motion for reconsideration.

THE COURT: Do you have any argument that I should separately consider your motion for reconsideration?

MR. POHL: Absolutely not, Your Honor.

THE COURT: It wasn't filed until after business hours yesterday.

MR. POHL: Understood.

THE COURT: All right. Well, I'm not -- I'm not going to consider that matter now.

As to your support for that, do you intend to appear

and offer any evidence?

MR. POHL: No, Your Honor.

THE COURT: You're just here giving moral support, I suppose?

MR. POHL: That is correct.

THE COURT: All right. Is there anything else that I need to take up with respect to these matters as a preliminary matter?

(No audible response heard)

THE COURT: All right. Mr. Cooper?

MR. COOPER: Your Honor, we're here before the Court on a motion for reconsideration under Rule 60, Federal Rule of Civil Procedure.

As you're aware -- quite aware of this case, the lender, South Carolina Community Bank, holds a mortgage lien on two properties owned by Mr. Washington's corporation, Carolina Procurement Institute, Incorporated, 1811 and 1815 Gervais Street here in Columbia.

At December the 9th -- excuse me. On October the 4th of 2014 -- the debtor, Gary and Michele Washington, October the 3rd, 2014 filed Chapter 11. Mr. John Davis was their attorney at that time, he has since been removed.

On December the 9th, 2014, the lender, South Carolina Community Bank, filed a motion to vacate the automatic stay as to the two properties on Gervais Street. In its motion and

certification of facts, the lender stated that the value of the properties was $450,000, and that the amount owed on the properties was well over $400,000.

I believe at the time that they filed that motion, they believed that there were two mortgages on the property. However, the City of Columbia, who thought they had a second mortgage, had failed to perfect -- properly perfect its mortgage. So there was one mortgage on the property, and that was that of the movant.

There was an agreement stated on the record at the January the 7th, 2015 hearing on the motion. Mr. Charles Webb appeared on behalf of the lender. Mr. John Davis appeared with Mr. Washington on behalf of the debtors.

The agreement was stated on the record. There's quite a bit of discussion from the Court and the parties as to that agreement. The agreement was supposed to be 26 hundred dollars a month that Mr. Washington would pay until, I believe, about July of 2015. In which case, the payments would increase to 31 hundred per month.

In addition to that, the parties agreed that Mr. Washington and CPI would sell the smaller of the two buildings, but not the land.

Your Honor had asked a number of questions about the agreement when it was announced on the record. It was very clear that there was an agreement.

For some reason after the parties left the Court, about three weeks later -- actually 43 days later, the lender, once again, filed a motion to lift the stay. And instead of Mr. Webb appearing in front of this Court to explain what happened to the so-called settlement, Mr. Weston appeared on behalf of the lender.

And in Your Honor's discussions at that -- at that February the 12th hearing, you went through twelve and two-thirds pages of asking what happened to the settlement.

Mr. Davis, on behalf of Mr. Washington, didn't do a very good job of defending that settlement.

Mr. Weston continued through that twelve and two-thirds pages to say "We don't have a deal. We don't have a deal. We couldn't make it happen," et cetera, et cetera.

The fact of the matter is we're here before the Court today to say three things:

One is that in its second motion, 43 days after the first motion, the lender stated the value of the properties as $306,300. They had then discovered that there was only one mortgage on the property, and that was their own mortgage, which was -- Mr. Webb said 340,000, there's some other evidence it was 360,000.

But in any case, using the first value on the first motion of $450,000, and then using the balance of the lender's lien would have created substantial equity, 80 to $90,000 of

equity in that property.

My question was, when I reviewed the information, why did the value change from 450,000 to 306,000 in 43 days? Our belief is that the lender manipulated those numbers to prove its burden ~~under 362 to show that there was no~~ equity in the property.

And as I state in the motion, the lender had in its possession a 2013 formal appraisal it had ordered, and that appraisal came back at $425,000.

The lender had in its possession an appraisal -- a second appraisal it had ordered that came back at $450,000 in 2014, only months before the first 362 motion.

We believe that at the time they filed the first motion, they used a $450,000 value because they had in their possession the recent $450,000 appraisal.

Now instead of using the debtor's scheduled amount of $306,300, I understand that's what they're going to argue, and I understand that's done quite a bit in Bankruptcy Court. I personally think that it's wrong. I think the lender, or any party, has a duty under Rule 9011, and other parts of the statute and rules, to come forth with information it has in its possession. And it clearly had those two appraisals showing substantial equity when it ~~filed its second m~~otion for relief.

The second thing is -- and so we believe that this Court was misled.

The second thing is that there was a settlement stated on the record. Mr. Webb should have been here to answer Your Honor's questions about what happened to that settlement. Instead, Mr. Weston was here. And I respect all of these lawyers, I'm not arguing about the lawyers. I'm just stating the facts and what I investigated in discovery.

So Mr. Webb should have clearly been here to explain, you know, what happened with this settlement. To this day, we don't seem to know what happened to the settlement, except what was discussed behind closed doors, which appears to be, according to Mr. Washington and Mr. Davis, that the bank jockeyed for a better position --

MR. WESTON: I would object, Your Honor. That's -- there's no testimony to that.

THE COURT: Well, let's not get into settlement discussions.

MR. COOPER: And then the third thing is, of course, Your Honor, that as is noticed by this Court, the debtors had ineffective assistance of counsel. We went through two hearings on that regard, and Your Honor had agreed with the debtors' motion back in April to relieve Mr. Davis as counsel. And he took the stand, and did a pretty poor job of showing what he knew about Chapter 11. And Your Honor made him disgorge his fees and costs.

So those are our three bases, Your Honor. And Mr.

Washington is willing to testify. But I sort of think this is purely a legal argument regarding the motion to reconsider. And we've laid out pretty much everything in the motion.

THE COURT: All right. Well, now tell me with respect to the -- to the initial motion for relief from stay to which the record reflects there was an announced settlement, why was there not a Rule 4001(d) notice to give effect to that settlement? And isn't it the case that that settlement isn't binding on any party until that notice has been given, and the Court order is entered following notice to all creditors of the adequate protection offer that had been made?

MR. COOPER: Yes, Your Honor. The -- any settlement under 4001(d) in Chapter 11 would have to be noticed. And we know that 90 percent of the time, there is no objection other than maybe the U.S. Trustee's Office asking a question, or for clarification.

I see the parties coming to a settlement and announcing the terms on the record different than the requirement of 4001(d) to serve and wait an objection period, and to see if there are any objections or questions, or clarifications, I see those as two separately different -- different things.

If -- if the parties come before this Court -- it's one thing to make an agreement in the back room. And to come before this Court and announce those terms on the record, this

Court should be able to count on that being the settlement.

The duty to notice it under Rule 4001(d) so that others know about it, to me, is a separate thing.

THE COURT: But isn't it the case that the Court does not enter an order on the settlement until that notice has been given? And that notice has never yet been given in this case.

MR. COOPER: That is true, Your Honor.

THE COURT: Okay. Now that being the case, how am I to reconsider the order lifting the stay when parties still, to this date, don't have notice of the -- of the adequate protection agreement that you're asking me to basically substitute in place for lifting the stay?

MR. COOPER: What we're asking you to do, Your Honor, is to go back and reinstate the stay, because there was equity. And we're asking you to go back and reinstate the settlement, but then have the parties notice that under 4001(d). We're asking you to go back and right the wrong. To put the debtors in the position they would have been in at this point. Because had they fulfilled the lender, their agreement, and those payments had been made, I suspect a plan would have been confirmed by now, and the case probably closed.

We're asking you to go back because the whole crux of CPI's Chapter 11 and the Washingtons' Chapter 11, we all know, is funds coming from -- generated from the Government

contracts, and the use of those two buildings, which are in the HUB zone, we all know that, we've been there.

So what we're asking you to do is take a look back and say, "What if the lender should have used the $450,000?" They would not have been able to meet their burden with a $360,000 loan of no equity.

But they told the Court that the value was three-o-six. And Your Honor had asked a number of questions of Mr. Weston, didn't ask what happened to the $450,000. The U.S. Trustee's Office didn't ask or step up and say, "Well, Your Honor, I just wanted to bring this to your attention. In the first motion and certification of facts 43 days ago, the lender used a $450,000 value, they're now using the debtors' schedules value."

THE COURT: And didn't the debtor, in response to the second motion, use that same value? Or not raise a value at all?

MR. COOPER: Well, I think Mr. Davis -- you know, the former attorney didn't defend -- I don't even know, Your Honor, if he noticed the difference. I mean that's how poorly he handled the case.

All we're saying is if that evidence -- or if it had been brought to the Judge's attention, to me it is evidence, the first motion, the value. The questions about, "Okay, where did that value come from?"

And then 43 days later, depleting it to $306,300, that's $143,000 depletion in property which could not possibly have happened, absent a disaster.

So what I'm saying is, as an officer of this Court, this Court was misled by those figures. That certification of facts is supposed to be a certification. And under the Model Rules of Professional Conduct, a lawyer has a duty to bring forth case law, statutes, evidence, even if it's against him or her. Not provide to the Court misleading evidence.

THE COURT: All right. Now --

MR. WESTON: Your Honor --

THE COURT: Going back to the settlement -- and I'll hear from you, Mr. Weston, in a minute.

There was never any motion to enforce the settlement.

MR. COOPER: True.

THE COURT: And we're months later now -- and I take it from the pleadings that the foreclosure has actually been completed, the hammer has fallen, and a deed has been issued by the master in equity here, conveying the property out of this bankruptcy estate. And the property -- the property was owned by Mr. and Mrs. Washington, not CPI, right?

MR. COOPER: True, Your Honor, yes.

THE COURT: Okay. So it's -- it's the Washingtons' real property. And the master has now transferred that property under what I -- I don't know that there's any dispute

of this -- what I would take it to be a lawful foreclosure action.

So you're not only asking me to reinstate the stay, at some point you've got to ask me to recover the property that's been transferred away by the master in equity, is that right?

MR. COOPER: That's right, Your Honor.

THE COURT: Okay.

MR. COOPER: And -- and --

THE COURT: And we -- where we stand today, there's an unappealed, and no one's asked me to reconsider the order, an order that says that the case is going to be dismissed on -- after the 31st of December unless a plan's been confirmed.

With all of those things left to do, is there any purpose to reconsidering the motion for relief from stay?

MR. COOPER: We believe there is, Your Honor. We believe the fact that -- and respectfully, we believe the fact that a Bankruptcy Court would have to go back and reverse a master in equity's order, it's not the first time that would have happened, it's happened before. We believe that if this Court feels that it was misled, and then it issued its order lifting the stay, everything that happens after that -- excuse the pun -- the expression -- is fruits of the poisonous tree.

That's why we go back and say, "Where would we have been if this wrong had not occurred? If the true value had

been presented to this Court, if the settlement had not been changed."

THE COURT: Well, how am I, at this point in time, to know what the value was at that time? At -- as of the hearing on the motion, what I had before me was the debtors' admission, through the schedules, of a value of $306,000. That -- that's good evidence under the Federal Rules of Evidence. It's an admission against interest by the debtor.

Even if the lender raised the issue of other appraisals that it had in its possession, given the volatility of the real estate market from 2007 all the way through even very recent times, how am I to make some determination of whether or not that appraisal had any real meaning with respect to the value?

And even today, I don't know that anyone's prepared to offer evidence from the appraiser as to -- I don't know that I've ever even seen the appraisals in a form or fashion. I don't know that they've been introduced into evidence. And I'm fairly certain that the appraisers have never appeared on the witness stand here and told me the basis of their appraisal.

And absent the appraiser being present, an appraisal report is the rankest of hearsay.

And you're asking me now to rely on something -- on a written document that I never saw, as to which I never received any evidence that I know of, and I -- I mean a lot of things

have happened in this case, maybe I'm missing something. I know the lawyers have ordered transcripts of hearing after hearing after hearing, and I have not gone back independently reviewed all of that, assuming that you folks will do that for me, and point me to the things that you think make your case.

But I still don't have any basis for determining a value of this property other than the one that was proven up in court through the debtors' own admission.

MR. COOPER: Your Honor, we're not asking you to -- to rely on appraisals that you've never seen.

THE COURT: Right.

MR. COOPER: Today we're here for a motion to reconsider.

THE COURT: Right.

MR. COOPER: If Your Honor reconsidered that, we would have a new trial on the issue of the 362. We would prove clearly by way of evidence from these three appraisers that the property at the time of that motion -- or at least at the time that they did their appraisals -- showed substantial equity. And when you talk about the debtors' admission, obviously there are different values for different purposes. One is the schedules. One could be later for confirmation, and one could be for a 362, one could be for a motion of value. There are different values.

THE COURT: But -- but -- but --

MR. COOPER: What we're saying --

THE COURT: But the value is always the value. It's just that you're talking about different points in time. It's not there's a different value for the schedules for the motion and for confirmation. There's a different value at different points in time in a case.

Now we -- we also haven't addressed the issue of the fact that Mr. Washington didn't appear at that second motion initial hearing. The -- if I recall correctly, the bank had their evidentiary support, whatever was necessary at that time. Because Mr. -- because there was an issue about notice to Mr. Washington about that hearing, but because the debt -- because the creditor had their evidence here, I went ahead and took the evidence at that point in time and made the determination that they had met their burden of proof without any countervailing evidence coming in from the other side.

Now -- I mean I -- I know your view is that Mr. Davis didn't handle any of that correctly. But you're asking me to go awfully far in trying to rectify a situation where basically I've got to start over from scratch a year later. And the fact that banks have in their files older appraisals that may be higher or lower numbers, I don't know -- I don't know if that gets you there.

MR. COOPER: Your Honor, just like you had stated that you were holding Mr. Washington to his scheduled amount of

$306,300, you should be holding the lender to its initial -- it -- we're not even talking about just the appraisals. Remember, we're talking about them stating in their first motion and certification of facts that the value was $450,000.

The whole thing about the appraisals is bringing in the appraisals. But in their certification of facts, 43 days before the second motion, they stated the value at $450,000.

THE COURT: All right. I -- I understand what you're saying.

It's -- ordinarily it's the lawyer for the opposition party that says, "Judge, wait a minute, they've said something different." I don't think very many people expect the judge to parse through the cigar box of all the pieces of paper that have been collected over a lifetime of financial dealings to make an independent determination as to what the judge thinks the value is. In fact, there are United States Supreme Court cases that tell me I cannot do that.

I preside over an adversary system in which the parties present evidence to me. I don't go out and try to make the cases for parties independently of what's presented to me in the courtroom. That might be the system in Europe, it's not the system that we have in the United States.

MR. COOPER: And, Your Honor, I agree with everything you've just said.

My problem is that they should have brought forth --

it should have been pointed out to the Court by them, the movant, that we changed that value -- we have a duty to be candid with this Court. We changed that value. Forty-three days earlier, we said 450,000.

And if you look back at it, they used the $450,000 value, and a four hundred and sixty something thousand dollar loan balance. Speculating once they realized later that there was no second mortgage, they had to reduce that value in order to prove there was no equity. We think that misled this Court, and we think your order was based on that misleading.

The second thing is it states on the record -- and Mr. Weston admitted to this Court in the transcript -- that the service notice address to the Washingtons was incorrect. And so Mr. Washington wasn't here because he had not been served -- he had not received notice.

Now --

THE COURT: Although there had been communication between Mr. Davis and Mr. Washington --

MR. COOPER: The night before.

THE COURT: -- in advance of that hearing. And Mr. -- Mr. Washington said in advance of that hearing, "I can't come to the hearing."

So I don't have as big a due process problem as you would have me jump to, do I? Mr. Washington knew about the hearing.

MR. COOPER: Yes. Yes, Your Honor.

THE COURT: Okay.

MR. COOPER: Mr. Davis --

THE COURT: So regardless of the wrong address, he knew about the hearing --

MR. COOPER: Mr. --

THE COURT: -- and elected not to be here.

MR. COOPER: Mr. Davis notified him by way of telephone call or communication the night before the hearing. Mr. Washington's response was I have a major commitment with the Government contracts.

And the third thing is, Your Honor --

THE COURT: No one asked me for a continuance. And I didn't know until later, I don't think, that there was a problem with the notice of service. Didn't that come up at a later hearing?

MR. COOPER: It did. Well, it --

MR. WESTON: It came up at that hearing.

MR. COOPER: It came up at that hearing.

THE COURT: Okay.

MR. COOPER: And Mr. Davis did, in fact, ask for a hearing -- I mean ask for a continuance at that hearing because Mr. Washington had not been notified in time.

And the -- the next step, Your Honor, is that the Court went forward and allowed Mr. Weston to present evidence

that -- regarding its burden to show that there was no equity in the property in the absence of Mr. Washington being here.

So, again, it's all laid out in the motion. I don't want to beat it to death, but basically we have some serious concerns. And we're not blaming the Court at all. We're saying --

THE COURT: I understand.

MR. COOPER: -- the lender had these duties.

THE COURT: I understand. All right.

Mr. Weston?

MR. WESTON: Your Honor, Nelson Weston on behalf of South Carolina Community Bank.

I would like to state personally myself, I'm a little bit taken aback by Mr. Cooper's argument that I misled this Court. I did not mislead this Court.

All these issues were discussed at previous hearings. The Court was aware of them. The fact of the matter is Mr. Washington was given an opportunity at certain stages to bring in evidence disputing those -- when we met that burden the 306,000. Those issues were discussed in that hearing.

And if my recollection is correct, you gave Mr. Davis an opportunity at another hearing to raise those issues, and he didn't present any evidence.

THE COURT: Right. And that was because he didn't have his appraiser with him.

MR. WESTON: That's not my problem, Your Honor.

THE COURT: But I mean that's -- that's -- that's why -- even though he was given the opportunity to have -- to present additional evidence later, there was no evidence to come before the Court because there was no appraiser here.

MR. WESTON: And that was not my burden.

THE COURT: Right. I understand that.

MR. WESTON: So I don't -- Mr. Cooper's representation that I misled this Court, I disagree with strongly.

THE COURT: I understand.

MR. WESTON: Your Honor, we shouldn't even be here today. This motion is a motion to reconsider a motion to reconsider an order granting the stay relief. It's filed six months after the fact. It's -- the order that he should have appealed would have been the previous order denying the amendment, and that was never done. There was no order or no motion to enforce the settlement. We actually went over the issues at the time of the previous hearing. The order -- the -- you know, at the stay hearing.

So I just -- I filed a brief. I think it's clear on my position in my brief of what the bank's positions are. And I think they're -- they are correct.

I'll be happy to go through them one-by-one, but as Your Honor noted, the property has gone to sale. It's been six

months since -- I think it was in April of last -- of this year when the order granting relief. No motion was filed until December of this month. I think they had plenty of opportunities to do it previously.

THE COURT: All right. Thank you.

MR. COOPER: Your Honor, that's the reason for Rule 60, allowing as much as one year, on the first three paragraphs. Basically there is no time frame on Number 6, which is any other reason that justifies relief. It states that a party has up to one year on the grounds of -- in our case, misrepresentation. We're not using the word "fraud" or "misconduct," we're just using the word "misrepresentation" as to the value and as to the settlement that they claim was not a settlement.

60(b)(6) states, "or any other reason that justifies relief." And it has no time frame on it.

We -- a separate motion or set of pleadings could have been filed, but we chose to do the motion for reconsideration. And basically the motion itself lays out all of our grounds for requesting relief.

And I would ask this Court, and any other court, not to look at what would we have to do to go back and unravel all of this? What sort of administrative nightmare or administrative problems would we have? It's been done before many times.

I would ask the Court to go back to the day of the hearing and reconsider the fact that there was a settlement stated on the record. It had not yet been noticed, that's different. I would ask the Court to reconsider that Mr. Washington was served at the wrong address, and perhaps he did not have enough time to prepare on that telephone call the night before from his lawyer.

I would ask the Court to reconsider the fact that there was a settlement, and although that settlement needed to be noticed to other creditors as to the parties, there was a settlement.

And then a few weeks later -- maybe a month later -- the lender's back in court on a second motion saying there was no settlement.

And I noticed that there wasn't a lot of discussion about specifically -- from Mr. Weston about specifically what happened to the settlement. It was that, "We couldn't make it work. We don't have a settlement. We don't have a settlement."

And I'd like to know to this day what happened to that settlement. Is my suspicion correct in that Mr. Weston -- Mr. Webb went back to the law office and Mr. Weston said, "You agreed to what?"

THE COURT: Well, I mean that's speculation about -- I'm not -- I'm not going to undertake trying to secondguess why

settlements that were never noticed to creditors weren't -- weren't finalized.

Ms. Barr, you -- I know the U.S. Trustee doesn't ordinarily get involved in these things. But the U.S. Trustee here has filed material with respect to confirmation and other issues that go directly to some of the issues that are being raised here today indicating that the motion to reconsider here is perhaps too late, the property's already gone.

But interestingly, also raising independently and for the first time that I'm aware of, and maybe the other parties aren't aware of this, a suggestion that Mr. Washington continues even after all of these events to represent in his own personal financial statements that the property's worth even less than $306,000.

So his own indication subsequent even to all of these items and -- as a -- an issue that he might be held that might effect what he thinks might be used to attack what he says the value is now, is -- I don't remember the numbers -- two hundred and some thousand dollars.

MS. BARR: Your Honor, if you'll recall at the October 22nd hearing, which was the hearing on our motion to dismiss, I had Mr. Washington look at a personal financial statement that was dated March 21st, 2015. His testimony was that he had changed that date, it was an older personal financial statement. And I had asked him, "Did you think the

information was accurate? Did you look over it?" And he had said, "Yes."

The value that was given in that personal financial information was 280,000 was the value for the Gervais Street property.

There were also other errors in the financial statement that was no longer accurate. But to stay on the Court's point, so, yes, I mean as of March 21st, 2015, there was something that would indicate Mr. Washington was saying it was worth two eighty.

I would also -- just kind of jumping ahead to the disclosure statement, that the debtors themselves used the figure of 306,300 in their liquidation analysis. So even as of right now, they're using that lower figure whenever it suits them.

So I do think that there is some indications a lower value has been used at different points in this bankruptcy process.

THE COURT: All right. Well, I -- Mr. Cooper, what -- what is it that you -- I know you and Mr. Weston have both said, "Well, there's all this information that we've laid out in our briefs -- in our motion." And I guess on the transcripts that had been filed now on the Court's records.

In order for me to make any kind of determination on the motion to reconsider, I've got to go through all of that

information, don't I?

MR. COOPER: And that's the reason for the new trial, Your Honor. This is a motion for reconsideration. This isn't the actual new trial. Your Honor, if --

THE COURT: But why would -- why would I reconsider unless there's some purpose to be served in doing so? If -- if I'm not fairly convinced that there's some -- some different result that will play out if I now do what maybe should have been done at several different points in the case, if it's to no benefit to anyone, why reconsider this at all, given the fact that this is an old Chapter 11 case that his pending dismissal in about three days because there's no plan that can be confirmed?

MR. COOPER: Your Honor, that -- the point is -- and you said it at the second hearing on the record. You were questioning Mr. Weston about the value and the settlement, and so forth. And you said, "Because if the value -- if there was a lot of equity," that was your exact words, "then you, the lender, your position would be more difficult. Mr. Washington's position would be better served when you get to the adequate protection part of it."

They tried to slam-dunk the first part of it and end it without Mr. Washington here. If the agreement had been made and Mr. Washington had begun the 26 hundred dollar a month payments, it's bumped up to 31 hundred dollar a month, --

THE COURT: Well, let me just ask you about that. Where is there any evidence that Mr. Washington could have made 26 hundred dollar a month payments all these months? Because the monthly operating reports certainly don't reflect that there was that sort of additional money sitting around.

MR. COOPER: Well, Your Honor, that's a valid question. But, again, I'm going back -- and respectfully --

THE COURT: I -- I understand. I'm going to deny the motion to reconsider. I don't -- I don't believe that there is satisfactory proof of a misrepresentation to the Court. I don't believe that there is satisfactory -- a satisfactory indication of any other basis for reconsidering that.

I also think that this is the second motion to reconsider that initial order. And I think the fact that Mr. Washington continues to this day in the disclosure statement that's before the Court to use the $306,000 figure, and has, in fact, in the interim used even lower figures suggests that it's not appropriate to reconsider that order.

I understand Mr. Washington's and your frustration with this. But the motion to reconsider relief from the stay is denied.

MR. WESTON: Thank you, Your Honor.

THE COURT: Now are there other issues that we need to take up today?

MR. COOPER: Yes, Your Honor. The confirmation of

the plan.

THE COURT: Now let me get appearances on those appearing in connection with confirmation. The disclosure statement has been conditionally approved by the Court. There is a plan proposed for confirmation. There have been objections to that by Federal and National Mortgage Association, and also by the United States Trustee.

Let me get appearances from all of those parties who are appearing in connection with the confirmation, beginning with the debtor.

MR. COOPER: Robert Cooper for the debtors in possession, Your Honor, and Mr. Washington is present.

THE COURT: Thank you.

MR. MENK: Good morning. Travis Menk here on behalf of Federal National Mortgage Association.

MS. BARR: Good morning, Your Honor. Linda Barr representing the United States Trustee.

THE COURT: And, Mr. Menk, as a preliminary matter, you, late yesterday, filed a motion to continue this hearing.

MR. MENK: Your -- yeah. Your Honor, I -- I -- I apologize. I've not been placed in the best of circumstances with my position on this.

THE COURT: Right.

MR. MENK: I've been -- I was brought in, obviously, very, very late in this Chapter 11 matter here, Your Honor. I

was given a late referral to look at this case for Federal National Mortgage Association.

At that time --

THE COURT: I notice that your notice of appearance was fairly recent.

MR. MENK: Yeah, it's, uh -- it was October 22nd, if I'm not mistaken. It's --

THE COURT: Now when you look at the plan, does it actually contain a motion to value your collateral? Or does it just simply say that the value is $170,000, and proceed on the assumption --

MR. COOPER: It does not contain a formal value -- motion to value, Your Honor. And what we've been doing lately is incorporating into the plan basically the same as what would be a motion to value with all of the numbers and so forth; that has not been done in this case.

And I haven't had a chance to talk to Mr. Menk, but our plan had been to value it. We gave them an opportunity earlier this week to send their agent out to take a look at what he thought the value was, and then we would discuss where we were going to end up and resolve that by way of monthly payments.

THE COURT: But there's no --

MR. COOPER: There's no --

THE COURT: There's no motion --

MR. COOPER: No.

THE COURT: -- for me to hear today.

MR. COOPER: No.

THE COURT: Okay.

MR. COOPER: And we don't -- we don't have a problem with him needing more time. We were going to work it out with him in any event. That was just our opinion of the value.

MR. MENK: Yeah, that was -- that was my plan, as well. Unfortunately, it appears -- first of all, Mr. Cooper's office has been very -- has worked with us very well. I have nothing but high regards, saying that (indiscernible). He's been extremely helpful and extremely responsive, especially during this holiday season. So I -- I can't, first of all, say anything but great things in that respect.

THE COURT: But --

MR. MENK: The situation I'm --

THE COURT: I take it, though, from your objection that you are owed more than $170,000.

MR. MENK: That is correct, Your Honor.

THE COURT: And absent any Court order that limits your secured claim to less than what you're owed, your client expects to be paid all of that money.

MR. MENK: Correct. They would like to be paid --

THE COURT: Right.

MR. MENK: -- more than is currently being paid under

the plan.

THE COURT: Okay. So since there is no motion to value the property, we don't need to continue the hearing today because that issue's not before the Court.

MR. MENK: Okay. That sounds great, Your Honor.

THE COURT: I --

MR. MENK: Thank you.

THE COURT: I just want to make sure you're --

MR. MENK: I --

THE COURT: From your client's --

MR. MENK: I understand.

THE COURT: -- perspective you --

MR. MENK: Thank you.

THE COURT: -- you -- you don't feel that there's a problem with going forward given the fact that there's no motion to limit your client's secured claim.

MR. MENK: That's correct, Your Honor. I'm just here trying to protect my client's interest as best as possible. And if that's the way the Court and everyone -- all parties feel, that is fine with me.

THE COURT: Thank you.

MR. MENK: Thank you.

THE COURT: Mr. Cooper?

MR. COOPER: Yes, Your Honor.

THE COURT: Tell me -- I -- I will -- will hear

whatever you have with respect to this, but I don't want to belabor all of these peoples' time.

I don't see -- the only ballot that was filed in connection with this plan was a rejection of the plan by Mr. Menk's client who indicated that -- that they were not onboard.

The plan clearly impairs classes of claims. One of the requirements -- one of the mandatory requirements for confirmation that is -- if plans impair a class, it has to be at least one class that votes in favor of the plan. And I don't see that from the record in the case.

MR. COOPER: That is correct, Your Honor. What our plan had been, we were notified by the mortgagee represented by Mr. Menk just this past week on their request to meet with Mr. Washington, go out and take a look at the value. And what we were going to do -- we -- we realize they had filed a rejection ballot and an objection at the last minute to preserve their position, we understood that.

Our plan had been to find out what their appraiser's value was, whether it was more or less than ours. And then have them withdraw their objection and submit a acceptance ballot.

But as Mr. Menk said, he ran into this problem within the last few days, that's the reason that we worked quickly in getting --

THE COURT: Okay.

MR. COOPER: -- Mr. Washington --

THE COURT: But even if Mr. Menk had not filed a ballot rejecting the plan, I still don't have a class that has affirmatively accepted the plan.

MR. COOPER: Right, and he would be that class.

THE COURT: And he would be that class, but he has a --

MR. COOPER: Right.

THE COURT: So -- so as of the moment, I can't confirm the plan that's before the Court. Is that -- is there an argument to the contrary?

MR. COOPER: The argument to the contrary is that Mr. Washington -- the U.S. Trustee's Office is going to go backwards and show that there hasn't been enough money there.

We would show that CPI -- which is really where the money's coming from -- has only been in its Chapter 11, and filed, I think, two operating reports, which don't give a full picture.

Mr. Washington would testify as to how much CPI has made in the year 2015, what it made in the past, how it's going to -- what contracts it has now, including an additional $176,000 contract that it was -- signed on December the 23rd, about a week ago, and how going forward they're going to be making these plan payments fairly easily.

THE COURT: So let's suppose that we spend much of

the day taking in testimony about financial issues. And at the end of the day, I am convinced that the plan is feasible, is there still a way in which I can confirm a plan today, or at any time before December 31st, given the fact that there is no class of impaired creditors that has accepted the plan?

MR. COOPER: You would not be able --

THE COURT: I mean I think you've got -- I think there's a bar to confirmation that you can't overcome, even if you meet every other requirement for confirmation.

MR. COOPER: If you -- that is true, Your Honor. If you hold us to the deadline of today or December the 31st, unless Mr. Menk, overnight, submits an acceptance ballot, no, the votes will not be there.

But it is quite typical -- I understand your previous order, and you know we're going to argue about not having enough time, et cetera, et cetera. It's typical in this District to get votes by way of an amended plan, addendum to a plan, or simply for someone to change a vote. I like people to vote, even if they vote to reject, because they can always change it --

THE COURT: So --

MR. COOPER: -- once we work it out.

THE COURT: So you're anticipating that sometime between now and December 31st, you're going to be able to have a -- a affirmative vote by class --

MR. COOPER: I can't guarantee that.

THE COURT: Well, what -- what I was going to give you the opportunity for is if you think, for the purpose of creating a record, and having the opportunity to confirm a plan before the 31st, if you think that I need to hear all of this testimony today because you're going -- you're hopeful that you will be able to convince a class of creditors to vote in favor of the plan before it's too late to do so, then I'm going to let you put on your evidence, and convince me that we're ready for confirmation. And if you're able to -- to do the other things that are necessary, then you may -- may be able to save the day at the last month.

Ms. Barr has, in addition to feasibility arguments, a list of other arguments against confirmation, beginning with the fact that the Gervais Street property is gone. If it comes back, South Carolina Community Bank's lien isn't treated in one of the ways that's permissible by the plan, additional problems. And on top of that, we have the Fourth Circuit's Maharaj (phonetic) issue is that the unsecured creditors aren't being paid in full here, and Mr. and Mrs. Washington are retaining the equity.

Now I -- I suppose you could also have unsecured creditors vote between now and the 31st to accept the plan, as well. And if -- and if a motion to reopen the balloting period is made and granted, you might have the opportunity to -- to

effect that issue just -- I -- I spent a fair amount of time -- although the Court was closed yesterday, I came in and worked and went through all of those issues. There are -- there -- there are issues with payment of taxes within a five-year period from the date of the order for relief that affect at least two creditors that have not consented to the treatment that's within the plan. They've not objected either, but they haven't consented to it.

I -- so, you know, we've got all these issues. But I'm here, and I'm here for the rest of the day. So tell me how you wish to proceed.

MR. COOPER: Your Honor, I'd like to take about ten minutes, if you would, to meet with Mr. Pohl and Mr. Washington.

THE COURT: Absolutely. I'm happy to have you do that. It's -- let's see. It's 11:26 now. If I give you until 11:45, which is a little more time than you've asked for, I'm probably so close to lunchtime that we're not going to be able to start before lunch, but we could go ahead -- if you tell me that you're ready to proceed to confirmation, I'll probably go ahead and take our lunch early, which means we can start early. And then we can try to -- try to get in whatever you've got during the afternoon, all right?

MR. COOPER: Okay.

THE COURT: If I could have -- make sure that the

conference room directly behind the courtroom is open, if it hasn't already been opened, we'll make sure that that's taken care of. And I'll be back on the bench at 11:45.

We'll be in recess until then. Thank you.

MR. COOPER: Thank you.

(Recess 11:27 a.m./Reconvene 11:45 a.m.)

THE COURT: Please be seated. All right. We're back on the record in 14-5589, Gary Allen and Michele Anne Washington.

Mr. Cooper, I gave you some time to talk with your client, and also with Mr. Pohl, who represents a corporation owned by your client in another Chapter 11.

You tell me how you would like to proceed.

MR. COOPER: Your Honor, respectfully, first we would like to ask for time to amend the disclosure statement and plan, and proceed to obtain ballots. I would ask for 30 days to do that.

THE COURT: And what's the basis for that request?

MR. COOPER: I believe that -- we believe that by then, we can convince the creditors to accept less than 100 percent under the Absolute Priority Rule.

We can convince the gentleman, Mr. Menk, who represents the bank on 2917 River Road, I believe we can get his vote.

We believe we can obtain the acceptance votes in

number and amount in order to get this Court to approve the plan.

THE COURT: And the basis for that belief is what? Have you had conversations with people who are teetering on changing their mind?

MR. COOPER: We have -- of course we've had conversation with Mr. Menk's clients.

We've had discussions with the IRS. They admit they generally do not submit an acceptance ballot.

We've had some discussion with the unsecured creditors. Many of which are the same unsecured creditors in the CPI corporate case.

The best scenario, as we've discussed -- Mr. Washington, Mr. Pohl, and I -- would be -- and I believe I discussed this with Mrs. Barr -- to consolidate the two cases because there's a good -- well, first of all, all the money comes from CPI.

Second of all, many of the creditors are the same. But I don't think that 51 percent of the creditors are the same.

THE COURT: But -- but you've not talked with any particular creditor who has indicated that they're thinking about changing their -- changing their mind, or participating? It's just sort of more a -- a hope for more time to be able to work with them?

MR. COOPER: Well, it's not just a hope, Your Honor. It's -- it's basically a number of years of experience where unsecured creditors generally just fall asleep. They don't put together a committee in this District. And you have to go to them and say, "Well, you know, nobody voted on the plan so you're getting whatever percentage." And then they understand, "Oh, I have to vote in favor of the plan."

THE COURT: But that hasn't been done.

MR. COOPER: That has not been done.

THE COURT: Okay. I -- I'm going to deny your motion for additional time. We -- there's a pending deadline, so the motion's denied.

MR. COOPER: Your Honor, we -- in that regard, we decide not to move forward on confirmation today.

THE COURT: All right. Well, there are pending objections to confirmation.

Ms. Barr, would you like to have confirmation of the plan denied?

MS. BARR: Yes, Your Honor.

THE COURT: Any objection to that, Mr. Cooper?

MR. COOPER: Except for the request for extension, Your Honor.

THE COURT: Confirmation of the debtors' plan is denied.

As a result of that, the Court's conditional approval

of the disclosure statement is withdrawn.

The Court will not set an additional time for filing amended disclosure statements and plans. Under the local rules, there is a brief period of time in which that can occur. But I would note for the parties that that time is outside the window within which the case may be dismissed following December 31st.

The only other issue that I have then is entering an order on the motion -- denying the motion to reconsider.

Frankly, given the holidays, it's not likely that that order would be prepared between now and December 31st. And if there is no confirmation, it's likely that I will enter an order dismissing the case, which will make moot an order on the motion -- denying the motion to reconsider.

All right? Is there anything else that I can do for the parties today?

MS. BARR: No, Your Honor.

MR. COOPER: Your Honor, I have to say this for the record. We would ask that you -- and we're not trying to be difficult. We would ask that you separate the motion for reconsideration from the motion -- confirmation order. And that Your Honor present conclusions of fact and law in a motion to deny the reconsideration.

THE COURT: Well, I -- I appreciate your desire that I engage in that effort. But the fact is I can enter just a

short order denying confirmation and withdrawing conditional approval of the disclosure statement. It would take me some time to enter extensive conclusions -- findings of fact and conclusions of law with respect to the motion to reconsider. By the time I have that as something that I can undertake to do, it's likely that the case will be dismissed. And I'm probably not going to -- probably not going to spend time putting together an order in a case that's been dismissed.

All right. I understand your request, and I'm not likely to accede to it.

That's the only matter on the calendar today, and we are adjourned for the day.

Thank you very much.

(Whereupon, at 11:52 a.m., the hearing was adjourned.)

CERTIFICATE OF TRANSCRIBER

I, KAREN HARTMANN, a certified Electronic Court Transcriber, certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



Karen Hartmann, AAERT CET**D0475 Date: January 4, 2016

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Sent: Tuesday, March 29, 2016 5:54 PM
To: Jonathan Milling <jmm@millinglaw.net>; gawcpi <gawcpi@att.net>
Subject: Motion and Proposed Order

Jonathan,

How does this look? Make whatever changes you need just make sure you get this filed by tomorrow at the latest.

Many Thanks,

Alex

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Attachments

- MExtensionFileBriefv2.doc (34.00KB)
- 2911311160.txt (5.79KB)

No. 16-2307

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT

In re: GARY ALLEN WASHINGTON
MICHELLE ANNE WASHINGTON
Debtors

GARY ALLEN WASHINGTON
MICHELLE ANNE WASHINGTON
Appellants

v.

SOUTH CAROLINA COMMUNITY BANK; FEDERAL NATIONAL MORTGAGE ASSOCIATION

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

OPENING BRIEF FOR APPELLANTS

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STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 158 since the judgment under review is a final judgment of a District Court reviewing a Bankruptcy Court. 28 U.S.C. §158.

ISSUES PRESENTED FOR REVIEW AND STANDARD OF REVIEW

1. Whether the Bankruptcy Court erred by failing to reinstate the automatic stay, give additional time to confirm a plan, and by dismissing the case.

Standard of Review

The District Court reviews the Bankruptcy Court's factual findings for clear error but questions of law *de novo*. Id.; FED. R. BANKR. P., RULE 8013. The Court of Appeals reviews the District Court *de* novo. The Bankruptcy Court's factual findings are clearly erroneous only if the findings leave the definite and firm conviction that the Bankruptcy Court made a mistake. The District Court reviews the Bankruptcy Court's decision to confirm a reorganization plan for an abuse of discretion. *In re Brotby*, 303 B.R. 177, 184 (9th Cir. BAP 2003). "A bankruptcy court abuses its discretion if it applies the law incorrectly or if it rests its decision on a clearly erroneous finding of a material fact." Id. The Court of Appeals also reviews such a finding by the District Court *de novo*.

STATEMENT OF THE CASE

i. Nature of the case

This is an appeal from a denial of a motion to reinstate the automatic stay as to a piece of real property in a Chapter 11 bankruptcy case, the denial of additional time to confirm a plan, and the dismissal of the case. The Bankruptcy Court ruled in favor of Appellees. The District Court affirmed.

ii. Course of the Proceedings

Debtors-Appellants filed for bankruptcy under Chapter 11 and Plaintiffs-Appellees were involved in the proceedings. The United States Trustee was involved pursuant to its supervisory role and South Carolina Community Bank as a creditor. After the hearings which are the subject of this appeal was conducted, the Bankruptcy Court entered the following orders which are being appealed: Docket No. 152 (January 4, 2016) Order Dismissing Case, Docket Number 150 (December 30, 2015) Order Denying Motion to Reconsider Relief From Stay, Docket Number 149 (December 29, 2015) Order Denying Confirmation of Chapter 11 Plan, Docket Number 147 (December 29, 2015) Debtors' oral request for additional time is denied, Docket Number 146 (December 29, 2015) Order Denying Request to Continue. Notice of Appeal from the Bankruptcy Court to the District Court was filed on January 12, 2016 (Dkt. No. 155).

The District Court affirmed on October 11, 2016 (Dist. Ct. Dkt. Nos. 59 and 60). Notice of Appeal was given November 8, 2016 (Dist. Ct. Dkt. No. 61).

iii. Disposition of the Lower Court

The Bankruptcy Court ruled in favor of Appellees and demoed relief to the appellants, the Debtors. The District Court affirmed.

iv. Statement of Facts

The Appellants are a husband and wife who are the debtors in the Chapter 11 case from which this appeal originates. Mr. Gary Washington operates a business Carolina Procurement Institute (*hereinafter* CPI) which operates from a building on Gervais Street in Columbia, South Carolina. The business is certified under the HUB Zone program which is special federal program which allows certain certified minority owned businesses located in certain areas to compete for federal contracts in a manner they ordinarily could not. Specifically CPI has contracts with the U.S. Military to move service members who are being relocated to another military base. The Hub Zone program allows small businesses such as CPI to effectively compete for these contracts along side national moving companies which it would otherwise be unable to do.

CPI is a community based small business which is committed to employing and employs principally disadvantaged persons who are have barriers to

employment and many of whom would otherwise not be able to participate in the work force. CPI's continued use of the Gervais Street building (there are actually two buildings with two addresses but they are referred to here as the property for simplicity) is necessary to maintain the HUB Zone certification, and if it were to lose the building would soon lose its certification under the HUB Zone program which would result in CPI closing and a number of disadvantaged workers losing the only jobs they can get.

Mr. and Mrs. Washington have taken out a loan with South Carolina Community Bank to finance the purchase of the Gervais Street building. The bankruptcy case was originally filed by another attorney Jonathan Davis on October 3, 2014 (Dkt. No. 1). Particularly the Gervais property was carelessly and improperly valued in the schedules that Mr. Davis filed.

On December 9, 2014, South Carolina Community Bank filed its first motion for relief from stay. A hearing was held on January 7, 2015 where a settlement had been reached and it was announced on the record (Transcript 1/7/2015, Dkt. No. 33). This settlement required Mr. Washington to pay $2,600 per month starting March 15, 2015 in adequate protection payments. The Court requested that the settlement be reduced to writing and file it with the Court giving notice to other creditors and an opportunity to object (Dkt. 33).

On January 25, 2015, South Carolina Community Bank filed a another motion for relief from the automatic stay on the Gervais property (Dkt. No. 25). A hearing was held on February 19, 2015 and an order was issued on February 26, 2015 (Dkt. No. 33) in which the Bankruptcy Court granted relief from the automatic stay stating that Debtors had not met their burden to provide adequate protection, although a $2,600 per month payment was offered the Bankruptcy Court ruled that the Debtors had not proven that they could make the adequate protection payment (Dkt. 33). There are also additional factors involved.

On March 12, 2015, Debtors filed a motion to reconsider the granting of relief asking for the enforcement of the settlement agreement (Dkt. No. 34, response at Dkt. No. 35). South Carolina Community Bank claims that this was not a final agreement but the record of the January 7, 2015 hearing shows clearly otherwise.

The January 7, 2015 hearing the transcript of which is in the record as Docket No. 30, makes it clear that this was an agreement, not a "tentative agreement as to the certain terms of a potential settlement" or "the certain terms of the tentative settlement" as characterized by SCCB (Dkt. No. 30 and 35):

THE COURT: So the agreement is that if the payments 3 aren't made, that you would be entitled to relief from stay (Mr. Webb is SCCB's counsel and Mr. Davis Debtors' counsel).

MR. WEBB: That's –

THE COURT: Is that right?

MR. WEBB: Correct.

MR. DAVIS: Correct, Your Honor.

UNIDENTIFIED SPEAKER: Yes, sir.

(Transcript. p. 4)

On April 8, 2015, the Bankruptcy Court denied the motion to reconsider citing procedural grounds including that that the new evidence with regards to value did not rise to the standard justifying a new trial. The Bankruptcy Court also indicated that it rejected the evidence on valuation because it had already ruled on that issue at a preliminary hearing where Debtors had failed to appear, not considering the lack of adequate notice (Dkt. No. 41).

On April 13, 2015, Debtors filed a motion asking the Bankruptcy Court to relieve and terminate their counsel Jonathan Davis (Dkt. No. 43). The motion informed the Bankruptcy Court that Davis had failed to subpoena the Debtor's appraiser in spite of written requests by Mr. Washington to do so and also that Davis had stated that the $306,000 fair market value was correct at the hearing that Mr. Washington did not have notice of and therefore did not attend. Furthermore, Davis refused to introduce evidence that there was equity in the property contrary to Mr. Washington's wishes. Debtor's further alleged that Mr. Davis was accepting

fee payments from them in cash without giving receipts (Dkt. No. 43). On September 17, 2015, the Court denied compensation for Mr. Davis and required the disgorgement of fees paid (Dkt. 101).

The Bankruptcy Court granted the motion to terminate Mr. Davis as Debtors' Counsel (Dkt. No. 48). Mr. Cooper was later retained to take over and he filed a number of amendments on June 1, 2016 (Dkt. Nos. 58 through 69). By the end of June some creditors had returned ballots accepting the plan (Dkt. No. 75 Synchrony Bank - Class 6 (General Unsecured), Dkt No. 76 South Carolina Department of Revenue – Class 2 (Unsecured Priority), No 77 South Carolina Departement of Revenue – Class 6 (General Unsecured). In other words with two accepting classes Debtors had a confirmable plan. On the July 16, 2015 hearing Debtors withdrew the plan and disclosure statements in order to be able to amend them and try again for confirmation.

On September 1, 2015, the Debtors' corporation, the Carolina Procurement Institute (CPI) also filed for Chapter 11 (Dkt. 98).

On September 15, 2015, the United States Trustee filed a motion to dismiss (Dkt. 98). It cited that the Debtors had been in bankruptcy for almost a year and had not filed a new plan and disclosure statement within 45 days of the July 16 hearing when the previous ones were withdrawn. The motion was very one sided, not what one might expect from the United States Trustee whose role is supposed

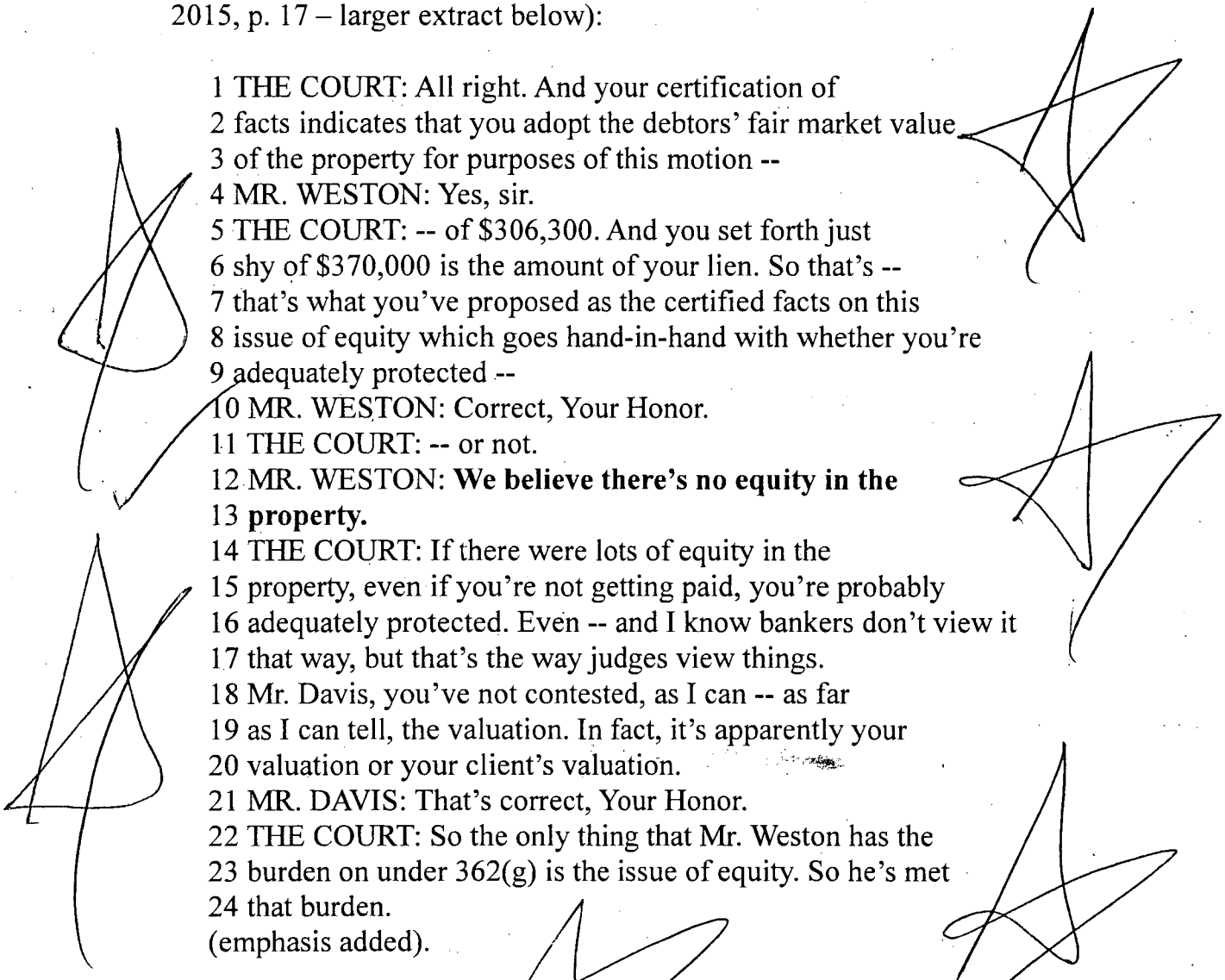
to be one of a neutral fiduciary. The motion did not mention, nor consider, that Debtors had difficulties with SCCB having breached the settlement agreement and the manner in which the motion to lift stay was conducted nor the difficulties Debtor had had with Mr. Davis. It simply stated the length of time the case had been pending, that two plans and disclosure statements were either denied or withdrawn, and the absence of a new plan or disclosure statement.

Debtors responded to the motion to dismiss citing among other things the difficulties with their prior attorneys and the need to obtain new debtor in possession financing in order for the best possible reorganization to take place (Dkt. No. 106). A hearing was held on October 22, 2015 at which the Bankruptcy Court, in an interlocutory order, found that the Debtors had failed to show a reasonable likelihood that a plan would be confirmed within a reasonable time, but allowed the Debtors until December 31, 2015 to confirm a plan (Dkt. No. 112).

On December 14, 2015 at Docket No. 129, Debtors filed a motion to reconsider the lifting of the automatic stay on the Gervais property citing misrepresentations by SCCB with respect to the motion to lift stay by 1) denying that a settlement agreement had been reached when the record clearly reflected this, 2) misrepresenting the value of the property in order to prevail on the no equity requirement in order to get relief from the automatic stay, and taking advantage of Debtors' prior counsel Mr. Davis' errors in managing the case, and 3) that Mr.

Davis' error had disadvantaged Debtors and caused them to lose the automatic stay on the property.

During the February 12, 2015 hearing, SCCB adopted the erroneous value that Mr. Davis had put into the Debtors' schedules and SCCB through its counsel Mr. Weston stated "We believe there's no equity in the property." (Transcript, Feb 12, 2015, p. 17 – larger extract below):



1 THE COURT: All right. And your certification of
2 facts indicates that you adopt the debtors' fair market value
3 of the property for purposes of this motion --
4 MR. WESTON: Yes, sir.
5 THE COURT: -- of $306,300. And you set forth just
6 shy of $370,000 is the amount of your lien. So that's --
7 that's what you've proposed as the certified facts on this
8 issue of equity which goes hand-in-hand with whether you're
9 adequately protected --
10 MR. WESTON: Correct, Your Honor.
11 THE COURT: -- or not.
12 MR. WESTON: **We believe there's no equity in the**
13 **property.**
14 THE COURT: If there were lots of equity in the
15 property, even if you're not getting paid, you're probably
16 adequately protected. Even -- and I know bankers don't view it
17 that way, but that's the way judges view things.
18 Mr. Davis, you've not contested, as I can -- as far
19 as I can tell, the valuation. In fact, it's apparently your
20 valuation or your client's valuation.
21 MR. DAVIS: That's correct, Your Honor.
22 THE COURT: So the only thing that Mr. Weston has the
23 burden on under 362(g) is the issue of equity. So he's met
24 that burden.

(emphasis added).

The truth in fact is quite different. SCCB knew that this was false because they had conducted three appraisals and were aware of the results. When SCCB learned that the City of Columbia was in fact unsecured for the second mortgage, then SCCB manipulated its figures in order to show the lack of equity in the property (Dkt. 129):

APPRAISALS IN POSSESSION BY SCCB

Date	Appraiser	Appraisal Value
01/16/2013	Rosen Appraisal Associates	$425,000
03/14/2014	McKinney & Associates, Inc.	$450,000
03/05/2015	Crider, Bouye, Elliott, & Goodwin, LLC	$557,000

REPRESENTATIONS TO THE COURT BY SCCB

Date	Occasion	Appraisal Value
12/09/2014	First Motion to Lift Stay	$450,000
12/10/2014	First Motion to Lift Stay (Amended)	$450,000
01/21/2015	Second Motion to Lift Stay	$306,300
01/21/2015	Amended Proof of Claim	$306,300
02/12/2015	Hearing on Second Motion to Lift Stay	$306,300

On February 19, 2015, the Court held a second hearing on the Second Motion to lift stay where Mr. Washington testified that the property is worth about $485,000 / $500,000 (Dkt. 105, p. 26):

Q Is it -- are you the insured?

10 A I'm the insured, the tenants coming in and out of the

11 building, the property -- HVAC systems, the -- the -- for the

12 total amount of the value of the property. It's about

13 485,000/500,000. And we pay for that every month.

On cross examination when discussing the values of the two buildings that comprise the property, Mr. Washington also said:

5 Q Have you provided the bank a copy of the insurance policy

6 covering this building since the filing of the bankruptcy?

7 A Yes.

8 Q When did you do that?

9 A The initial meeting, I had to give a copy of their

10 insurance, and I have provided that through Travelers, it has

11 our workers' comp, general liability. And then I gave it to my

12 attorney, it breaks out 354 -- 354,000 for 1815, 185,000 for

13 1811 Gervais through Travelers Insurance.

Finally on page 53 of the February 19, 2015 Transcript with Mr. Washington still b eing on cross-examination:

6 A So you see those checks right there. But the check that

7 was 12,200 they gave us is right back there, and you'll see

8 each one of those checks, they add up to 85 -- there's two --

9 two more.

10 Plus the increase of the building, the property

11 itself has been -- I would say about 51,000 based on what I

12 believe the value of just the amount that I owe Community Bank

13 and what the value of the building is.

14 And then I added another $11,000 from the Pest Bureau

15 by working them in to pay for the things that -- necessary so

16 they can actually have space and utilize it. And then I added

17 this other 27,000. I say about 90,000 has been -- is the

18 equity in the building.

Additionally, on pages 54 to 55 of the Transcript of February 19, 2015 (Dkt. 105):

21 Q So -- when you say "we" --

22 A The individual gets the money -- the grant funding. They

23 have to put the money out first, and then they come and

24 evaluate, say you've done the work, we say the inspection's

25 done. So I say I've done about $90,000 of equity in the

1 building. Should I explain?

There was plenty of evidence before the Court indicating that the bank's figures were false and that Debtor's counsel was incompetent not to argue about

that issue. Mr. Washington even specifically stating that there was $90,000 of equity in the building.

The Bankruptcy Court denied the motion on December 30, 2015 in an order entered at Docket No. 150 without ever making findings about the value, that is the Court never decided whether fraud was committed by SCCB. The Bankruptcy Court suggested that the Debtors has still used the $306,000 value when "its suits them" for making payments to creditors but never cited any instances when this was done other than that the United States Trustee had previously presented evidence of this. In short the Court ignored clear evidence of fraud by SCCB and the United States Trustee has also taken no formal action on this fraud contributing to the problem.

SUMMARY OF THE ARGUMENT

The automatic stay is governed by equitable principles. A creditor breaches its duty of good faith and fair dealing to a debtor when it commits fraud in the bankruptcy process. A creditor who has committed fraud is therefore not entitled to keep the relief it obtained from the automatic stay. Regardless of whether fraud is committed by the introduction of fraudulent evidence or by taking advantage of the negligence of the Debtor's attorney, it is still fraud to advocate a position one knows to be false.

Bankruptcy judges have the power to police this process even *sua sponte* under Section 105 of the Bankruptcy Code. Although they have discretion, when there is clear fraud, Bankruptcy Judges abusive their discretion when they fail to act. This is particularly the case when the office of the United States Trustee fails to act. Otherwise there is no one to insure the integrity of the process and the courts.

The Bankruptcy Court, here, in spite of being faced with such clear evidence of fraud, failed to even hold a hearing to investigate the allegations. Just because the debtor's counsel was asleep at the wheel, is not a reason to tolerate fraud by a creditor. A bankruptcy court's failure to address fraud on the court is an abuse of discretion.

The Bankruptcy Court abused its discretion by dismissing the case when Debtor's counsel only had six months to reorganize given the amount of the tasks involved. This is particularly the case as there was never a full fledged confirmation hearing held. The Court abused its discretion because it failed to follow Section 1112 and consider the interests of the estate rather the Court only considered the interests of SCCB the creditor who committed fraud rather than other innocent creditors, which is what Congress meant when it mandated consideration of the creditors.

Particularly since a creditor defrauded the court and the estate, it is understandable that additional time will be necessary to reorganize. SCCB was allowed to abscond with its fraud at the expense of the estate and all other creditors who lost their opportunity to be paid. The system of justice suffers when such fraud is tolerated. The court should have given the estate, the victim of this fraud, time to reorganize instead of putting the case on what amounted to fast track dismissal.

ARGUMENT

I. *The Bankruptcy Court* erred by not granting the motion to reinstate the automatic stay as to the Gervais property

The automatic stay is governed by equitable principles. A creditor who has unclean hands is not entitled to relief from the automatic stay. Likewise, a creditor who has previously been granted relief secured by fraud, is no longer entitled to keep such relief. This is basic equity.

In every contract there is duty of good faith and fair dealing. *In re William A. Smith Constr. Co.*, 86 B.R. 115, 119 (Bankr. N.D. Ohio 1988). SCCB by perpetrating the fraud on the Bankruptcy Court in order to obtain relief from the automatic stay, breached this duty of good faith and fair dealing. This breach may

cause the Debtors to lose the property once for all and they are already on the road to doing so.

Section 105 of the Bankruptcy Code has empowered Bankruptcy Judges to take action when justice so requires, even *sua sponte*. Because there is discretion to take action under this Section, the Bankruptcy Judges should do so when appropriate and they abuse their discretion when faced with a situation that requires action and they fail to do so.

The Bankruptcy Court has an "inherent obligation to monitor the debtor's estate and to serve the public interest." *In re Busy Beaver Bldg. Ctrs.*, 19 F.3d 833, 84 (3d Cir. 1994). Other courts have referred to the "bankruptcy court's fundamental responsibility to monitor the integrity of the proceedings before it" *In re Martin*, 817 F.2d 175, 180 (1st Cir. 1987). This has also been described as "referring to the bankruptcy court's "duty to preserve the integrity of the court." *In re Temple Retirement Community, Inc.*, 97 Bankr. 333, 337 (Bankr. W.D. Tex. 1989).

Here the Bankruptcy Court completely abdicated this responsibility. It had multiple pieces of evidence from multiple dates indicating that a creditor had committed fraud on the Court and on the Debtors. The Bankruptcy Court should have held a hearing and determined the actual value of the property, the knowledge of different people at SCCB including whether its attorney should have known or

knew about it and were required to take any remedial actions, none of which were taken. In doing so the Bankruptcy Court abused its discretion.

Given the lack of action on this issue by the United States Trustee, the Court is all that stands between the perpetrator of the fraud and the victim. "The United States Trustee Program ('the Program') is responsible for monitoring bankruptcy cases, including the supervision of cases filed under the Chapter 11 of title 11, United States Code." *In re Fabricators Supply Co.*, 292 B.R. 531, 535 (Bankr. D.N.J. 2003) (See, 28 U.S.C. § 586 (a)).

South Carolina Community Bank has not offered any credible explanation of for the manipulation of the appraisals. Instead it refers to the negligence of the Debtors' former counsel in not opposing this valuation. The Bank essentially tries to blame the lack of resistance by the victim of its fraud, claiming the victim consented to be defrauded.

The estate and the Debtors are not the only victims in this case the court and the system of justice are the other victims. Because the fraud was on the court and committed in the course of judicial proceeding it makes it all the more serious. It sets a terrible example when judges allow such conduct by a party to go entirely unpunished.

It is elementary legal ethics that is unethical for a party to advocate a false fact even if it is also presented by the opposing party or not objected to by that

party. It is a party's knowledge of the falsity of a fact that matters. The negligence of an opposing counsel in preventing the fraud is not a defense to fraud.

If this Court does not reverse the judgment below that sends a terrible message that not only is fraud on the court tolerated, it is rewarded by allowing the perpetrator to keep its gains from the fraudulent act. Society breaks down when this kind of conduct is tolerated.

II. The Bankruptcy Court erred in not giving additional time beyond December 29, 2015 to confirm a plan and The Bankruptcy Court erred in dismissing the case.

Although it is within court's broad discretion to convert or dismiss Chapter 11 case pursuant to 11 U. S. C. § 1112(b), provided best interests of creditors and estate are served, the harshness of dismissal mandates that it result only from a strong evidentiary showing and after consideration of merits of debtor's plan. *In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973 (Bankr. N. D. N. Y. 1988); *In re Brauer*, 80 B.R. 903, 911 (N. D. Ill. 1987).

Here because the new counsel Mr. Cooper had just gotten on the case one month earlier, it was not reasonable for him to be required to be ready in July 2015. It is understood in this industry that it takes a while to become familiar with a

Chapter 11 case filed by another attorney, one cannot step in his shoes right away. The interim circumstances including having to recover fees from the estate's previous counsel Mr. Davis among other things there was not much time to get up to speed. Debtors really only had 6 months from Mr. Cooper's start to the dismissal. This is not enough time to reorganize and Debtors never had a full fledged confirmation hearing. These factors weigh in favor of giving more time.

If nothing else, the fact that there was creditor perpetrated fraud would favor giving even more time for a new attorney to get the case confirmed. There are so many things to do to get a Chapter 11 case off the ground, even in the absence of fraud that having to investigate it is a significant distraction to an already busy debtor's counsel.

It is within the Court's broad discretion to convert or dismiss the case, provided the best interests of the creditors and the estate are served. *In re Albany Partners, Ltd.*, supra, 749 F.2d 670, 674 (11th Cir. 1984); *In re Justus Hospitality Properties, Ltd.*, 86 B.R. 261, 265 (Bankr. M.D.Fla. 1988); *In re Eden Associates*, 13 B. R. 578, 583-584 (Bankr. S.D.N.Y. 1981). Such discretion should consider all the circumstances present and being an equitable decision, must consider fraud by a creditor. Also a creditor who commits fraud should not be given rewards for such fraud when dismissal would benefit the perpetrating creditor.

Here the Court completely abdicated its responsibility to consider the best interests of the estate. By not reimposing the automatic stay the Court deprived the estate of the opportunity to reorganize and then by dismissing the case completely sealed its fate. The Court should have allowed a reasonable amount of time at least another 6 months to propose a new plan with or without debtor in possession financing.

By dismissing the case the Bankruptcy Court only considered the interests of SCCB the creditor who committed fraud, at the expense of the estate and the innocent creditors which is what Congress meant when it mandated consideration of the creditors. The innocent creditors would have been paid more if the Debtor had been allowed to reorganize. The dismissal gave SCCB a windfall unjustly granting it what amounts to a couple of hundred thousand dollars of equity in the property, possibly more in that particular appreciating market. SCCB was allowed to abscond with its fraud at the expense of the estate and all other creditors who lost their opportunity to be paid. This is the last opportunity in the Bankruptcy process to correct this injustice.

CONCLUSION AND PRAYER

Appellants argue for the reasons stated above the District Court erred by affirming the Bankruptcy Court which erred by not reinstating the automatic stay,

refusing to give additional time to confirm a plan, and by dismissing the case. Appellants respectfully request this Court reverse the judgments and orders of the District Court. The Apellants pray for relief.

Respectfully submitted,

2/6/17
Date

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Wathen & Associates
Attorney for Appellants
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CERTIFICATE OF SERVICE

I certify that on February 6, 2017, or at the very latest the next day, I have or am contemporaneously serving a copy of these documents with all attachments on those entities listed below either by first class mail or through the Clerk by electronic mail and as a supplement directly by e-mail.

2/6/17
Date

/s/ Alexander B. Wathen
Alexander B. Wathen

BY ELECTRONIC MEANS THROUGH THE CLERK OR BY FIRST CLASS MAIL:

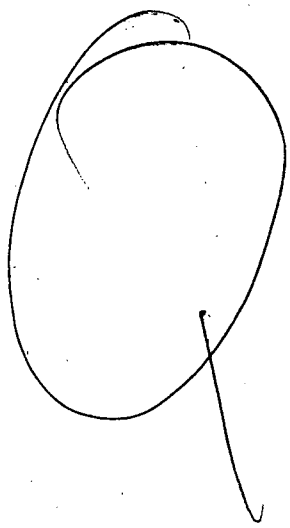
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Attach



The appraisal regulations are in Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and specifically The Interagency Appraisal and Evaluation Guidelines 2010.

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) requires each Agency to prescribe appropriate standards for the performance of real estate appraisals in connection with "federally related transactions," which are defined as those real estate-related financial transactions that an Agency engages in, contracts for, or regulates and that require the services of an appraiser. The Agencies' appraisal regulations must require, at a minimum, that real estate appraisals be performed in accordance with generally accepted uniform appraisal standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board, and that such appraisals be in writing. An Agency may require compliance with additional appraisal standards if it makes a determination that such additional standards are required to properly carry out its statutory responsibilities.

"An institution or its agent must directly select and engage appraisers."

For reasons previously stated, the bank **cannot** use any other appraisal (Gary's schedules) other than the one it used as part of the lending process and submitted to the court in furtherance of its foreclosure action. Accordingly, the bank did not meet its burden under 11 U.S.C. 360(g)(1). Gary's previous attorney actions and Gary's schedules are moot. When the bank accepted Gary's attorney's "guesstimate" as its own appraisal it knowingly violated its regulatory requirements and committed fraud. This denied Gary his documented equity in the property by virtue of the bank's own $450,000 appraisal and denied other of Gary's scheduled creditors the chance to seek relief from the roughly $150,000 in equity he held in the property.

Here are links to cases that I believe are relevant:

http://www.nyeb.uscourts.gov/sites/nyeb/files/opinions/Opinion_reg_16-10-25pdf.pdf

https://www.gpo.gov/fdsys/pkg/USCOURTS-mab-4_10-bk-44471/pdf/USCOURTS-mab-4_10-bk-44471-0.pdf

http://law.justia.com/cases/federal/appellate-courts/F2/908/967/169124/

Steve Siegel
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EXECUTIVE CV
Professional Qualifications and Experience

Steven N. Siegler, FRICS, ASA is a founder and the Executive Managing Director of Equity Development Systems, Ltd. (EDS). Established in 1986, EDS is an internationally recognized valuation, lending compliance and collateral-asset management provider and, trusted mergers and acquisitions advisor and private-equity investor. Mr. Siegler is the owner and developer of the Port of Slidell, LLC., a 55-acre waterfront Business and Industrial Park in Slidell, Louisiana, USA (metropolitan New Orleans).

Steven is an Accredited Senior Appraiser with and was honored to serve as the founding International Chairman of the Appraisal Review and Management discipline of valuation of the American Society of Appraisers (ASA) from 2002 - 2011. The ASA is an international organization of appraisal professionals and it is the oldest and only major appraisal organization representing all of the disciplines of appraisal specialists. As Chairman, Steven directed the development of the Appraisal Review and Management (ARM) discipline and co-authored its Principals of Valuation series of courses and he has served on numerous executive committees of the ASA.

Additionally, Steven is an accredited member of the College of Fellows (FRICS) of the Royal Institution of Chartered Surveyors (RICS) and he is the only RICS accredited expert witness in the Western Hemisphere and one of only a handful of such expert witnesses in the world holding the much-coveted RICS Expert Witness Accreditation Service (EWAS) accreditation. RICS, with headquarters in London, is the leading organization of its kind in the world for more than 100,000 qualified professionals in commercial and residential valuation, development, construction and project management, brokerage, planning and finance.

Mr. Siegler pioneered the appraisal review profession and directed the development, writing and implementation of the appraisal review standards and guidelines and best practices that are taught to and in use today by professional valuers, legal experts and government agencies throughout-the-world. Steven was recently solicited by the FDIC to write, implement, and manage the new national appraisal review program for the U.S. Federal Reserve, the FDIC and all interagency regulators as part of Dodd-Frank. Steven holds TS Clearance with the U.S. Government and he is uniquely qualified to practice before U.S. Government agencies in national-security related valuation and in other special matters.

Mr. Siegler is most often engaged to provide multidisciplinary appraisal review and valuation related expert-witness testimony and litigation-support services to attorneys and law firms throughout-the-world. Steven has successfully handled some of the world's most high-profile valuation cases. He recently successfully represented Stephen M. Case, co-founder of AOL and

former Chairman of AOL-Time Warner in the multibillion-dollar lawsuit brought against Mr. Case and other Case family members by the former owners of Grove Farm in Kauai, Hawaii. Steven regularly appears on broadcast media as an on-air contributor in matters of valuation, a provides appraisal review seminars and training to valuers, attorneys, and other like-professionals and government officials around-the-world. Mr. Siegler is a *SuperAppraiser®* rat member of the peer-voted SuperAppraisers® Global Network of internationally recognized appraisers.

Mr. Siegler is distinguished by the United States Environmental Protection Agency (USEPA) f his award-winning representation of secured creditors interests in the disposition of environmentally impaired real estate special-situations, and EDS is recognized by the USEPA : the only company of its kind allowed to conduct onsite investment recovery and site management services for secured creditors on active Superfund Sites. EDS has handled the disposition of Superfund and Brownfield sites for client secured lenders as well as for its own account. Additionally, EDS is pleased to provide Keeper services to the United States Marsha Service.

Steven served as a member of the Board of Directors of CHEMFIX, an NYSE publicly traded company, and advises and champions the advancement and accreditation of women-owned businesses through the Women's Business Enterprise National Council (WBENC).

PROFESSIONAL APPRAISAL ACCREDITATION OVERVIEW:

2015 - Present	Royal Institution of Chartered Surveyors, Expert Witness Accreditation Serv (EWAS) Accreditation
2014 - 2016	Vice President, Chapter 82, American Society of Appraisers, Ft. Lauderdale,
2012 - Present	Fellow, Royal Institution of Chartered Surveyors, Member No. 6202906
2002 - 2011	Chairman, Appraisal Review and Management, American Society of Appraisers, Washington, D.C.
1997 - Present	Accredited Member/Accredited Senior Appraiser, American Society of Appraisers, Discipline: Appraisal Review and Management, Member No. 029183, Certification Current
2002 - 2003	President, Harold S. Clark Chapter 69, American Society of Appraisers, New Orleans, LA
2006 - 2010	Appraisal Institute ; Associate Member No. 419161

PROFESSIONAL APPRAISAL CONTINUING EDUCATION REQUIREMENTS:

Uniform Standards of Professional Appraisal Practice-USPAP (Current)
Royal Institution of Chartered Surveyors-'Red Book' (Current)
Professional Appraisal Ethics, ASA / RICS (Current)

REPRESENTATIVE CLIENTS:

Merck	Pfizer	General Electric
Ally Capital Corporation	INOVA Federal Credit Union	Mellon Bank
Eagle National Bank	Penitech Financial Corporation	Oxford Finance
Signal Capital Corporation	Critical Capital Growth Fund, LP.	Blue Equity, LLC.
Susquehanna Bank	Tower Acquisition, LLC.	U.S. Marshals Service
Orange Blossom Business Center	JGB Bank	Stephen M. Case

U.S. Federal Bureau of Investigation / U.S. Department of Justice / Other U.S. Agencies

NOTEWORTHY RECENT APPRAISAL EXPERT WITNESS REPRESENTATIONS:

Client: Blue Equity, LLC

Successfully represented at arbitration Blue Equity, LLC., a Louisville-based private-equity firm and its Jamaica-based subsidiary BE TAG Holdings Limited, with appraisal expert witness testimony and litigation-support services in connection with its sale of Shell Oil Jamaica to Rubis Caribbean Holdings, Inc., a subsidiary of French-based Rubis, an international company specialized in the storage, distribution and sale of petroleum, liquefied petroleum gas (LPG), food and chemical products.

Client: Gianfranco Gobbi

Successfully represented international financier Gianfranco Gobbi with appraisal expert witness testimony and litigation-support services in connection with valuation-related litigation in Ft. Pierce, FL involving his interests in the Orange Blossom appraisal expert witnessBusiness Center, St Lucie County's Premiere Business Center. Mr. Siegler's appraisal expert witness testimony and litigation-support services helped successfully resolve complex tax, conflict resolution and other valuation related matters.

Client: Tower Acquisition, LLC

Successfully represented this telecommunications provider providing appraisal expert witness testimony and litigation-support services in connection with the condemnation of its right-of-way for the operation of its 200' microwave antenna in Herriman, UT. This action was brought against the company by the City of Herriman as part of The Sorenson Group's billion-dollar Herriman Towne Center Project.

Client: Stephen M. Case et al.

Successfully represented Stephen M. Case, co-founder of AOL and former chairman of AOL Time Warner providing appraisal expert witness testimony and litigation-support services in connection with the multibillion-dollar lawsuit brought against Mr. Case and other Case family members in his acquisition of Grove Farm, Kauai, Hawaii.

Client: Ally Capital Corporation

Successfully represented this international leasing company for over eight (8) years providing appraisal expert witness testimony and litigation-support and other services in connection with: Biomedical Waste Systems, Inc.; Boston, MA., Bronx, NY., Chelsea, MA., Chester, PA.,

Minneapolis, MN., Houston, TX., Nashville, TN., Norcross, GA., and Kenner, LA., Tri-Star, Inc., Salt Lake City, UT; Profco, Inc., Lafayette, LA., and Bakersfield, CA; Premium Enterprises, Inc., Denver, CO; Pace, Inc., Minneapolis, MN., Tampa, FL., and Kansas City, KS; Bentley Mills, Inc., Los Angeles, CA; Quadrex, Inc., Stuart, FL; National Tire Services, Inc., Tucson, AZ; Portable Energy Products, Inc., Scotts Valley, CA; Micon Equipment, Inc., Phoenix, AZ; Transcolor, Inc., Linthicum, MD., Albany, GA., and Commerce, CA; Prinns Recycling Corp., NY; Environmental Instrument, Inc., Concord and Oakdale, CA; Urethane Technologies, Inc., Santa Ana, CA; Chemfix Technologies, Inc., Metairie, LA - NYSE, Member Board of Directors; Ernst & Young / Audits for Ally Capital Corp., San Francisco, CA; Foam Molders & Specialties, Inc., Cerritos, CA; American Waste Control, Middletown, NY; VenVirotek, Inc., Bakersfield and Arvin, CA; Cyclean, Inc., Indianapolis, IN; Geoclean Environmental, Inc., Bridgeport, CT; ReClaim, Inc., Kearny and Camden, NJ; Consolidated Stainless, Inc., FL .

Client: Critical Capital Growth Fund, LP
Successfully represented this global investment fund providing appraisal expert witness testimony and litigation-support services and divestiture services in connection with Focus Affiliates, Inc., Lincolnshire, IL., the then largest distributor of cell phones and related telecommunications products in the Midwest.

Client: Signal Capital Corporation
Successfully represented this lender providing appraisal expert witness testimony and litigation-support services and other services in connection with Southern Shipbuilding Corporation, Slidell, LA., a national priorities list Superfund site.

Mr. Siegler can be contacted direct at 866.887.0852 Ext. 701 and by Email at sns@edsltd.com.

----- Forwarded Message -----
From: Steven Siegler <sns@edsltd.com>
To: rhcooper <rhcooper@thecooperlawfirm.com>; robert@pohlpa.com; alexwathenattorney@gmail.com; Jonathan Milling <jmm@millinglaw.net>
Cc: gawcpi@att.net
Sent: Monday, January 18, 2016 9:29 AM
Subject: Steve Siegler; Gary Washington Matter

Gentelmen:

Having considered the dynamics surrounding the Washington matter and the contemplated appeal of Judge Duncan's ruling, I submit the following for your consideration.

It is my understanding that no appraisals were submitted to Judge Duncan by Mr. Washington's bankruptcy attorney that would evidence equity or anything else to the court. Accordingly, whether or not Mr. Washington had or did not have equity in the properties would be rendered *moot* as part of the appellate process and before the appellate court. That is, since no appraisals were entered into the record for Judge Duncan to consider as part of the bankruptcy, no appraisals nor Reviews of same can now, *ex post facto*, come into or be heard in the appeal of his decision.

HOWEVER, the attorney for the Bank/Mortgage company **did** (***emphasis added***) enter an appraisal into the record, an ***oral appraisal***, when he represented to the court that the properties were worth some $300K. That appraisal **is at issue** before the appellate court and is, by law, reviewable.

An attorney, by virtue of his/her law license, is allowed to issue an appraisal of real property. However, the attorney is held to the same exacting standards as defined in The Uniform Standards for Professional Appraisal Practice (USPAP) which is incorporated into and made part of South Carolina law.

USPAP/ South Carolina / U.S. law:

STANDARD 2: REAL PROPERTY APPRAISAL, REPORTING

In reporting the results of a real property appraisal, an appraiser must communicate each analysis, opinion, and conclusion in a manner that is not misleading.

STANDARD 2 does not dictate the form, format, or style of real property appraisal reports. The form, format, and style of a report are functions of the needs of intended users and appraisers. The substantive content of a report determines its compliance.

Standards Rule 2-1

Each written or oral real property appraisal report must:

(a)

clearly and accurately set forth the appraisal in a manner that will not be misleading;

(b)

contain sufficient information to enable the intended users of the appraisal to understand the report properly; and

(c)

clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions used in the assignment.

Since the underlying and subsequent *oral appraisal* made by the attorney were prepared and used in connection with the granting and servicing of credit by a federally insured financial institution it is considered a federally-related transaction and it is subject to the myriad reporting requirements contained in but not limited to Dodd-Frank.

Rather than argue the merits of equity in the property to the appellate, which may or may not be at issue and allowed before the appellate court at this point, our suggestion is to assert to the appellate that the Bank/Mortgage Company failed to enter a "*qualified appraisal*" by a "*qualified appraiser*" as defined by federal law (U.S. Interagency Appraisal and Evaluation Guidelines (75 FR 77450) / Treasury/IRS Circular 230 Guidelines) in a federally related transaction.

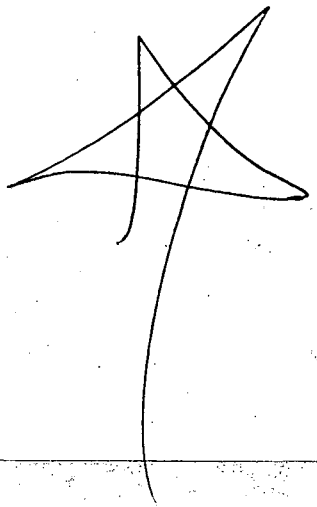
In issuing his *oral appraisal* to the federal court, the attorney not only issued a defective appraisal pursuant to USPAP / So. Carolina / U.S. law, but also issued one that was known by the Bank/Mortgage Company ***and the attorney*** to be a material misrepresentation to the federal court of their own appraisal; the Kennedy, Watson, McKinney & Associates, Inc., appraisal ($450K) dated April 2, 2014 prepared for City of Columbia & South Carolina Community Bank. Among other things, this is appraisal fraud.

For the above reasons and others, I respectfully suggest that the appeal assert appraisal fraud by the City of Columbia, South Carolina Community Bank and its/their attorney.

Please let me know your thoughts and opinions.

With kindest regards,

Steve Siegler



AFFIDAVIT OF STEVEN N. SIEGLER, FRICS, ASA

PERSONALLY APPEARED BEFORE ME, the undersigned, who, being duly sworn, deposes and states as follows:

1. I am an accredited appraiser and have served as an appraisal expert witness in numerous Court cases in various jurisdictions.

2. A true and accurate copy of my CV is attached hereto and incorporated herein as Exhibit A.

3. I have been asked to consider the valuation of the property located at 1811 and 1815 Gervais Street, Columbia, South Carolina (the "Property"), the Bankruptcy proceedings relevant to this property, as well as the Federal Regulations relevant to this property and the values set by the Bank and the Court.

4. As a part of my consideration, I read the March 5, 2015 Appraisal Report of Crider, Bouye, Elliott & Goodwin, LLC, which set the value of the property on or about this date at Five Hundred Fifty Seven Thousand and no/100 ($557,000.00) Dollars ("Crider Appraisal").

5. I found the Crider Appraisal, a true and accurate copy of which is attached hereto and incorporated herein as Exhibit B, appears to have been properly prepared in accordance with appraisal standards.

6. I also considered the March/April 2014 Appraisal of Kennedy, Watson, McKinney & Associates, Inc. which set the fair market value on this date at Four Hundred Fifty Thousand and no/100 ($450,000.00) Dollars, a true and accurate copy of which is attached hereto and incorporate herein as Exhibit C ("Kennedy Appraisal").

7. I found that the Kennedy Appraisal too appears to have been properly prepared in accordance with appraisal standards, although it was more dated and therefore less relevant to the fair market value of the Property.

8. I have considered the information provided to the Bankruptcy Court regarding the value of the Property in 2015 and there does not appear to be any evidence to substantiate a fair market value for the Property of Three Hundred Six Thousand Three Hundred and no/100 ($306,300.00) Dollars.

9. Three Hundred Six Thousand Three Hundred and no/100 ($306,300.00) Dollars does not appear to represent the value of the Property under any accepted appraisal standards.

10. Based upon the appraisals I have considered, it appears that the fair market value of the Property in 2015 greatly exceeded that found by the Bankruptcy Court, and exceeded the balance due on the loan South Carolina Community Bank foreclosed upon.

FURTHER DEPONENT SAYETH NOT.

Steven N. Siegler, FRICS, ASA

SWORN TO and subscribed before me
this 19 day of Febuy, 2016

Notary Public for Florida
My Commission Expires: 11-13-18

CHRISTOPHER JOHN ALEX
MY COMMISSION #FF175838
EXPIRES November 13, 2018
(407) 398-0153 FloridaNotaryService.com

Interagency

Appraisal and Evaluation

Guidelines

(December 2, 2010)

Interagency Appraisal and Evaluation Guidelines

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Interagency Appraisal and Evaluation Guidelines

I. Purpose

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) (the Agencies) are jointly issuing these Interagency Appraisal and Evaluation Guidelines (Guidelines), which supersede the 1994 Interagency Appraisal and Evaluation Guidelines. These Guidelines, including their appendices, address supervisory matters relating to real estate appraisals and evaluations used to support real estate-related financial transactions.[1] Further, these Guidelines provide federally regulated institutions and examiners clarification on the Agencies' expectations for prudent appraisal and evaluation policies, procedures, and practices.

II. Background

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA)[2] requires each Agency to prescribe appropriate standards for the performance of real estate appraisals in connection with "federally related transactions,"[3] which are defined as those real estate-related financial transactions that an Agency engages in, contracts for, or regulates and that require the services of an appraiser.[4] The Agencies' appraisal regulations must require, at a minimum, that real estate appraisals be performed in accordance with generally accepted uniform appraisal standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board, and that such appraisals be in writing.[5] An Agency may require compliance with additional appraisal standards if it makes a determination that such additional standards are required to properly carry out its statutory responsibilities.[6] Each of the Agencies has adopted additional appraisal standards.[7]

The Agencies' real estate lending regulations and guidelines,[8] issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA),[9] require each institution to adopt and maintain written real estate lending policies that are consistent with principles of safety and soundness and that reflect consideration of the real estate lending guidelines issued as an appendix to the regulations.[10]

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1 These Guidelines pertain to all real estate-related financial transactions originated or purchased by a regulated institution or its operating subsidiary for its own portfolio or as assets held for sale, including activities of commercial and residential real estate mortgage operations, capital markets groups, and asset securitization and sales units.

2 Pub. L. 101-73, Title XI, 103 Stat. 511 (1989); 12 U.S.C. 3331, *et seq.*

3 12 U.S.C. 3339

4 12 U.S.C. 3350(4).

5 Supra Note 3.

6 Id.

7 OCC: 12 CFR part 34, subpart C; FRB: 12 CFR part 208, subpart E, and 12 CFR part 225, subpart G; FDIC: 12 CFR part 323; OTS: 12 CFR part 564; and NCUA: 12 CFR part 722.

8 OCC: 12 CFR part 34, subpart C; FRB: 12 CFR part 208, subpart E; FDIC: 12 CFR part 365; and OTS: 12 CFR 560.100 and 560.101.

9 Pub. L. 102-242, § 304, 105 Stat. 2354; 12 U.S.C. 1828(o).

10 NCUA's general lending regulation addresses residential real estate lending by federal credit unions, and its member business loan regulation addresses commercial real estate lending. 12 CFR 701.21; 12 CFR part 723.

The real estate lending guidelines state that an institution's real estate lending program should include an appropriate real estate appraisal and evaluation program.

III. Supervisory Policy

An institution's real estate appraisal and evaluation policies and procedures will be reviewed as part of the examination of the institution's overall real estate-related activities. Examiners will consider the size and the nature of an institution's real estate-related activities when assessing the appropriateness of its program.

While borrowers' ability to repay their real estate loans according to reasonable terms remains the primary consideration in the lending decision, an institution also must consider the value of the underlying real estate collateral in accordance with the Agencies' appraisal regulations. Institutions that fail to comply with the Agencies' appraisal regulations or to maintain a sound appraisal and evaluation program consistent with supervisory guidance will be cited in supervisory letters or examination reports and may be criticized for unsafe and unsound banking practices. Deficiencies will require appropriate corrective action.

When analyzing individual transactions, examiners will review an appraisal or evaluation to determine whether the methods, assumptions, and value conclusions are reasonable. Examiners also will determine whether the appraisal or evaluation complies with the Agencies' appraisal regulations and is consistent with supervisory guidance as well as the institution's policies. Examiners will review the steps taken by an institution to ensure that the persons who perform the institution's appraisals and evaluations are qualified, competent, and are not subject to conflicts of interest.

IV. Appraisal and Evaluation Program

An institution's board of directors or its designated committee is responsible for adopting and reviewing policies and procedures that establish an effective real estate appraisal and evaluation program. The program should:

- Provide for the independence of the persons ordering, performing, and reviewing appraisals or evaluations.
- Establish selection criteria and procedures to evaluate and monitor the ongoing performance of appraisers and persons who perform evaluations.
- Ensure that appraisals comply with the Agencies' appraisal regulations and are consistent with supervisory guidance.
- Ensure that appraisals and evaluations contain sufficient information to support the credit decision.
- Maintain criteria for the content and appropriate use of evaluations consistent with safe and sound banking practices.

- Provide for the receipt and review of the appraisal or evaluation report in a timely manner to facilitate the credit decision.

- Develop criteria to assess whether an existing appraisal or evaluation may be used to support a subsequent transaction.

- Implement internal controls that promote compliance with these program standards, including those related to monitoring third party arrangements.

- Establish criteria for monitoring collateral values.

- Establish criteria for obtaining appraisals or evaluations for transactions that are not otherwise covered by the appraisal requirements of the Agencies' appraisal regulations.

V. Independence of the Appraisal and Evaluation Program

For both appraisal and evaluation functions, an institution should maintain standards of independence as part of an effective collateral valuation program for all of its real estate lending activity. The collateral valuation program is an integral component of the credit underwriting process and, therefore, should be isolated from influence by the institution's loan production staff. An institution should establish reporting lines independent of loan production for staff who administer the institution's collateral valuation program, including the ordering, reviewing, and acceptance of appraisals and evaluations. Appraisers must be independent of the loan production and collection processes and have no direct, indirect or prospective interest, financial or otherwise, in the property or transaction.[11] These standards of independence also should apply to persons who perform evaluations.

For a small or rural institution or branch, it may not always be possible or practical to separate the collateral valuation program from the loan production process. If absolute lines of independence cannot be achieved, an institution should be able to demonstrate clearly that it has prudent safeguards to isolate its collateral valuation program from influence or interference from the loan production process. In such cases, another loan officer, other officer, or director of the institution may be the only person qualified to analyze the real estate collateral. To ensure their independence, such lending officials, officers, or directors must abstain from any vote or approval involving loans on which they ordered, performed, or reviewed the appraisal or evaluation.[12]

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[11] The Agencies' appraisal regulations set forth specific appraiser independence requirements that exceed those set forth in the Uniform Standards of Professional Appraisal Practice (USPAP). Institutions also should be aware of separate requirements on conflicts of interest under Regulation Z (Truth in Lending), 12 CFR 226.42(d).

[12] NCUA has recognized that it may be necessary for credit union loan officers or other officials to participate in the appraisal or evaluation function although it may be sound business practice to ensure no single person has the sole authority to make credit decisions involving loans on which the person ordered or reviewed the appraisal or evaluation. 55 FR 5614, 5618 (February 16, 1990), 55 FR 30193, 30206 (July 25, 1990).

Communication between the institution's collateral valuation staff and an appraiser or person performing an evaluation is essential for the exchange of appropriate information relative to the valuation assignment. An institution's policies and procedures should specify methods for communication that ensure independence in the collateral valuation function. These policies and procedures should foster timely and appropriate communications regarding the assignment and establish a process for responding to questions from the appraiser or person performing an evaluation.

An institution may exchange information with appraisers and persons who perform evaluations, which may include providing a copy of the sales contract[13] for a purchase transaction. However, an institution should not directly or indirectly coerce, influence, or otherwise encourage an appraiser or a person who performs an evaluation to misstate or misrepresent the value of the property.[14] Consistent with its policies and procedures, an institution also may request the appraiser or person who performs an evaluation to:

- Consider additional information about the subject property or about comparable properties.
- Provide additional supporting information about the basis for a valuation.
- Correct factual errors in an appraisal.

An institution's policies and procedures should ensure that it avoids inappropriate actions that would compromise the independence of the collateral valuation function,[15] including:

- Communicating a predetermined, expected, or qualifying estimate of value, or a loan amount or target loan-to-value ratio to an appraiser or person performing an evaluation.
- Specifying a minimum value requirement for the property that is needed to approve the loan or as a condition of ordering the valuation.
- Conditioning a person's compensation on loan consummation.
- Failing to compensate a person because a property is not valued at a certain amount.[16]

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[13] Refer to USPAP Standards Rule 1-5(a) and the Ethics Rule.

[14] For mortgage transactions secured by a consumer's principal dwelling, refer to 12 CFR 226.36(b) under Regulation Z (Truth in Lending) through March 31, 2011. Also refer to 12 CFR 226.42, which is mandatory beginning on April 1, 2011. Regulation Z also prohibits a creditor from extending credit when it knows that the appraiser independence standards have been violated, unless the creditor determines that the value of the property is not materially misstated.

[15] See 12 CFR 226.42(c).

[16] This provision does not preclude an institution from withholding compensation from an appraiser or person who provided an evaluation based on a breach of contract or substandard performance of services under a contractual provision.

- Implying that current or future retention of a person's services depends on the amount at which the appraiser or person performing an evaluation values a property.

- Excluding a person from consideration for future engagement because a property's reported market value does not meet a specified threshold.

After obtaining an appraisal or evaluation, or as part of its business practice, an institution may find it necessary to obtain another appraisal or evaluation of a property and would be expected to adhere to a policy of selecting the most credible appraisal or evaluation, rather than the appraisal or evaluation that states the highest value. (Refer to the *Reviewing Appraisals and Evaluations* section in these Guidelines for additional information on determining and documenting the credibility of an appraisal or evaluation.) Further, an institution's reporting of a person suspected of non-compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), and applicable federal or state laws or regulations, or otherwise engaged in other unethical or unprofessional conduct to the appropriate authorities would not be viewed by the Agencies as coercion or undue influence. However, an institution should not use the threat of reporting a false allegation in order to influence or coerce an appraiser or a person who performs an evaluation.

VI. Selection of Appraisers or Persons Who Perform Evaluations

An institution's collateral valuation program should establish criteria to select, evaluate, and monitor the performance of appraisers and persons who perform evaluations. The criteria should ensure that:

- The person selected possesses the requisite education, expertise, and experience to competently complete the assignment.

- The work performed by appraisers and persons providing evaluation services is periodically reviewed by the institution.

- The person selected is capable of rendering an unbiased opinion.

- The person selected is independent and has no direct, indirect, or prospective interest, financial or otherwise, in the property or the transaction.

- The appraiser selected to perform an appraisal holds the appropriate state certification or license at the time of the assignment. Persons who perform evaluations should possess the appropriate appraisal or collateral valuation education, expertise, and experience relevant to the type of property being valued. Such persons may include appraisers, real estate lending professionals, agricultural extension agents, or foresters.[17]

[17] Although not required, an institution may use state certified or licensed appraisers to perform evaluations. Institutions should refer to USPAP Advisory Opinion 13 for guidance on appraisers performing evaluations of real property collateral.

An institution or its agent must directly select and engage appraisers. The only exception to this requirement is that the Agencies' appraisal regulations allow an institution to use an appraisal prepared for another financial services institution provided certain conditions are met. An institution or its agents also should directly select and engage persons who perform evaluations. Independence is compromised when a borrower recommends an appraiser or a person to perform an evaluation. Independence is also compromised when loan production staff selects a person to perform an appraisal or evaluation for a specific transaction. For certain transactions, an institution also must comply with the provisions addressing valuation independence in Regulation Z (Truth in Lending).[18]

An institution's selection process should ensure that a qualified, competent and independent person is selected to perform a valuation assignment. An institution should maintain documentation to demonstrate that the appraiser or person performing an evaluation is competent, independent, and has the relevant experience and knowledge for the market, location, and type of real property being valued. Further, the person who selects or oversees the selection of appraisers or persons providing evaluation services should be independent from the loan production area. An institution's use of a borrower-ordered or borrower-provided appraisal violates the Agencies' appraisal regulations. However, a borrower can inform an institution that a current appraisal exists, and the institution may request it directly from the other financial services institution.

A. Approved Appraiser List

If an institution establishes an approved appraiser list for selecting an appraiser for a particular assignment, the institution should have appropriate procedures for the development and administration of the list. These procedures should include a process for qualifying an appraiser for initial placement on the list, as well as periodic monitoring of the appraiser's performance and credentials to assess whether to retain the appraiser on the list. Further, there should be periodic internal review of the use of the approved appraiser list to confirm that appropriate procedures and controls exist to ensure independence in the development, administration, and maintenance of the list. For residential transactions, loan production staff can use a revolving, pre-approved appraiser list, provided the development and maintenance of the list is not under their control.

B. Engagement Letters

An institution should use written engagement letters when ordering appraisals, particularly for large, complex, or out-of-area commercial real estate properties. An engagement letter facilitates communication with the appraiser and documents the expectations of each party to the appraisal assignment. In addition to the other information, the engagement letter will identify the intended use and user(s), as defined in USPAP. An engagement letter also may specify whether there are any legal or contractual restrictions on the sharing of the appraisal with other parties. An institution should include the engagement letter in its credit file. To avoid the appearance of any conflict of interest, appraisal or evaluation development work should not commence until the institution has selected and engaged a person for the assignment.

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[18] See 12 CFR 226.42.

VII. Transactions That Require Appraisals

Although the Agencies' appraisal regulations exempt certain real estate-related financial transactions from the appraisal requirement, most real estate-related financial transactions over the appraisal threshold are considered federally related transactions and, thus, require appraisals.[19] The Agencies also reserve the right to require an appraisal under their appraisal regulations to address safety and soundness concerns in a transaction. (See Appendix A, *Appraisal Exemptions*.)[20]

VIII. Minimum Appraisal Standards

The Agencies' appraisal regulations include minimum standards for the preparation of an appraisal. (See Appendix D, *Glossary of Terms*, for terminology used in these Guidelines.) The appraisal must:

- Conform to generally accepted appraisal standards as evidenced by the USPAP promulgated by the Appraisal Standards Board of the Appraisal Foundation unless principles of safe and sound banking require compliance with stricter standards. Although allowed by USPAP, the Agencies' appraisal regulations do not permit an appraiser to appraise any property in which the appraiser has an interest, direct or indirect, financial or otherwise in the property or transaction. Further, the appraisal must contain an opinion of market value as defined in the Agencies' appraisal regulations. (See discussion on the definition of market value below.) Under USPAP, the appraisal must contain a certification that the appraiser has complied with USPAP. An institution may refer to the appraiser's USPAP certification in its assessment of the appraiser's independence concerning the transaction and the property. Under the Agencies' appraisal regulations, the result of an Automated Valuation Model (AVM), by itself or signed by an appraiser, is not an appraisal, because a state certified or licensed appraiser must perform an appraisal in conformance with USPAP and the Agencies' minimum appraisal standards. Further, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act)[21] provides "[i]n conjunction with the purchase of a consumer's principal dwelling, broker price opinions may not be used as the primary basis to determine the value of a piece of property for the purpose of loan origination of a residential mortgage loan secured by such piece of property."[22]

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[19] In order to facilitate recovery in designated major disaster areas, subject to safety and soundness considerations, the Depository Institutions Disaster Relief Act of 1992 provides the Agencies with the authority to waive certain appraisal requirements for up to three years after a Presidential declaration of a natural disaster. Pub. L. 102-485, § 2, 106 Stat. 2771 (October 23, 1992); 12 U.S.C. 3352.

[20] As a matter of policy, OTS uses its supervisory authority to require problem associations and associations in troubled condition to obtain appraisals for all real estate-related transactions over $100,000 (unless the transaction is otherwise exempt). NCUA requires a written estimate of market value for all real estate-related transactions valued at the appraisal threshold or less, or that involve an existing extension of credit where there is either an advancement of new monies or a material change in the condition of the property. 12 CFR 722.3(d).

[21] Pub. L. 111-203, 124 Stat. 1376 (2010).

[22] Dodd-Frank Act, Section 1473(r).

- Be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction. An institution should obtain an appraisal that is appropriate for the particular federally related transaction, considering the risk and complexity of the transaction. The level of detail should be sufficient for the institution to understand the appraiser's analysis and opinion of the property's market value. As provided by the USPAP Scope of Work Rule, appraisers are responsible for establishing the scope of work to be performed in rendering an opinion of the property's market value. An institution should ensure that the scope of work is appropriate for the assignment. The appraiser's scope of work should be consistent with the extent of the research and analyses employed for similar property types, market conditions, and transactions. Therefore, an institution should be cautious in limiting the scope of the appraiser's inspection, research, or other information used to determine the property's condition and relevant market factors, which could affect the credibility of the appraisal.

  According to USPAP, appraisal reports must contain sufficient information to enable the intended user of the appraisal to understand the report properly. An institution should specify the use of an appraisal report option that is commensurate with the risk and complexity of the transaction. The appraisal report should contain sufficient disclosure of the nature and extent of inspection and research performed by the appraiser to verify the property's condition and support the appraiser's opinion of market value. (See Appendix D, *Glossary of Terms*, for the definition of appraisal report options.)

  Institutions should be aware that provisions in the Dodd-Frank Act address appraisal requirements for a *higher-risk mortgage* to a consumer.[23] To implement these provisions, the Agencies recognize that future regulations will address the requirement that the appraiser conduct a physical property visit of the interior of the mortgaged property.[24]

- Analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units. Appraisers must analyze, apply, and report appropriate deductions and discounts when providing an estimate of market value based on demand for real estate in the future. This standard is designed to avoid having appraisals prepared using unrealistic assumptions and inappropriate methods in arriving at the property's market value. (See Appendix C, *Deductions and Discounts*, for further explanation on deductions and discounts.)

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[23] Under the law, the provisions are effective 12 months after final regulations to implement the provisions are published. See Dodd-Frank Act, Section 1400(c)(1).

[24] Section 1471 of the Dodd-Frank Act added a new section 129H to the Truth-in-Lending Act (15 U.S.C. 1631 *et seq.*).

- Be based upon the definition of market value set forth in the appraisal regulation. Each appraisal must contain an estimate of market value, as defined by the Agencies' appraisal regulations. The definition of market value assumes that the price is not affected by undue stimulus, which would allow the value of the real property to be increased by favorable financing or seller concessions. Value opinions such as "going concern value," "value in use," or a special value to a specific property user may not be used as market value for federally related transactions. An appraisal may contain separate opinions of such values so long as they are clearly identified and disclosed.

  The estimate of market value should consider the real property's actual physical condition, use, and zoning as of the effective date of the appraiser's opinion of value. For a transaction financing construction or renovation of a building, an institution would generally request an appraiser to provide the property's current market value in its "as is" condition, and, as applicable, its prospective market value upon completion and/or prospective market value upon stabilization.[25] Prospective market value opinions should be based upon current and reasonably expected market conditions. When an appraisal includes prospective market value opinions, there should be a point of reference to the market conditions and time frame on which the appraiser based the analysis.[26] An institution should understand the real property's "as is" market value and should consider the prospective market value that corresponds to the credit decision and the phase of the project being funded, if applicable.

- Be performed by state certified or licensed appraisers in accordance with requirements set forth in the appraisal regulation. In determining competency for a given appraisal assignment, an institution must consider an appraiser's education and experience. While an institution must confirm that the appraiser holds a valid credential from the appropriate state appraiser regulatory authority, a state certification or license is a minimum credentialing requirement. Appraisers are expected to be selected for individual assignments based on their competency to perform the appraisal, including knowledge of the property type and specific property market.

  As stated in the Agencies' appraisal regulations, a state certified or licensed appraiser may not be considered competent solely by virtue of being certified or licensed. In communicating an appraisal assignment, an institution should convey to the appraiser that the Agencies' minimum appraisal standards must be followed.

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[25] Under NCUA regulations, "market value" of a construction and development project is the value at the time a commercial real estate loan is made, which includes "the appraised value of land owned by the borrower on which the project is to be built, less any liens, plus the cost to build the project." 68 FR 56537, 56540 (October 1, 2003) (referring to Office of General Counsel Opinion 01-0422 (June 7, 2001)); 12 CFR 723.3(b).

[26] See USPAP, Statement 4 on Prospective Value Opinions, for further explanation.

IX. Appraisal Development

The Agencies' appraisal regulations require appraisals for federally related transactions to comply with the requirements in USPAP, some of which are addressed below. Consistent with the USPAP Scope of Work Rule,[27] the appraisal must reflect an appropriate scope of work that provides for "credible" assignment results. The appraiser's scope of work should reflect the extent to which the property is identified and inspected, the type and extent of data researched, and the analyses applied to arrive at opinions or conclusions. Further, USPAP requires the appraiser to disclose whether he or she previously appraised the property.

While an appraiser must comply with USPAP and establish the scope of work in an appraisal assignment, an institution is responsible for obtaining an appraisal that contains sufficient information and analysis to support its decision to engage in the transaction. Therefore, to ensure that an appraisal is appropriate for the intended use, an institution should discuss its needs and expectations for the appraisal with the appraiser. Such discussions should assist the appraiser in establishing the scope of work and form the basis of the institution's engagement letter, as appropriate. These communications should adhere to the institution's policies and procedures on independence of the appraiser and not unduly influence the appraiser. An institution should not allow lower cost or the speed of delivery time to inappropriately influence its appraisal ordering procedures or the appraiser's determination of the scope of work for an appraisal supporting a federally related transaction.

As required by USPAP, the appraisal must include any approach to value (that is, the cost, income, and sales comparison approaches) that is applicable and necessary to the assignment. Further, the appraiser should disclose the rationale for the omission of a valuation approach. The appraiser must analyze and reconcile the information from the approaches to arrive at the estimated market value. The appraisal also should include a discussion on market conditions, including relevant information on property value trends, demand and supply factors, and exposure time. Other information might include the prevalence and effect of sales and financing concessions, the list-to-sale price ratio, and availability of financing. In addition, an appraisal should reflect an analysis of the property's sales history and an opinion as to the highest and best use of the property. USPAP requires the appraiser to disclose whether or not the subject property was inspected and whether anyone provided significant assistance to the appraiser signing the appraisal report.

X. Appraisal Reports

An institution is responsible for identifying the appropriate appraisal report option to support its credit decisions. The institution should consider the risk, size, and complexity of the transaction and the real estate collateral when determining the appraisal report format to be specified in its appraisal engagement instructions to an appraiser.

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[27] See USPAP, Scope of Work Rule, Advisory Opinions 28 and 29.

USPAP provides various appraisal report options that an appraiser may use to present the results of appraisal assignments. The major difference among these report options is the level of detail presented in the report. A report option that merely states, rather than summarizes or describes the content and information required in an appraisal report, may lack sufficient supporting information and analysis to explain the appraiser's opinions and conclusions.

Generally, a report option that is restricted to a single client and intended user will not be appropriate to support most federally related transactions. These reports lack sufficient supporting information and analysis for underwriting purposes. These less detailed reports may be appropriate for real estate portfolio monitoring purposes. (See Appendix D, *Glossary of Terms*, for the definition of appraisal report options.)

Regardless of the report option, the appraisal report should contain sufficient detail to allow the institution to understand the scope of work performed. Sufficient information should include the disclosure of research and analysis performed, as well as disclosure of the research and analysis typically warranted for the type of appraisal, but omitted, along with the rationale for its omission.

XI. Transactions That Require Evaluations

The Agencies' appraisal regulations permit an institution to obtain an appropriate evaluation of real property collateral in lieu of an appraisal for transactions that qualify for certain exemptions. These exemptions include a transaction that:

- Has a transaction value equal to or less than the appraisal threshold of $250,000.
- Is a business loan with a transaction value equal to or less than the business loan threshold of $1 million, and is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment.[28]
- Involves an existing extension of credit at the lending institution, provided that:
    - There has been no obvious and material change in market conditions or physical aspects of the property that threaten the adequacy of the institution's real estate collateral protection after the transaction, even with the advancement of new monies; or
    - There is no advancement of new monies other than funds necessary to cover reasonable closing costs.[29]

For more information on real estate-related financial transactions that are exempt from the appraisal requirement, see Appendix A, *Appraisal Exemptions*. For a discussion on changes in market conditions, see the section on *Validity of Appraisals and Evaluations* in these Guidelines.

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[28] NCUA regulations do not contain an exemption from the appraisal requirements specific to member business loans.

[29] NCUA's appraisal regulation requires credit unions to meet both conditions to avoid the need for an appraisal as set forth in 12 CFR 722.3(d).

Although the Agencies' appraisal regulations allow an institution to use an evaluation for certain transactions, an institution should establish policies and procedures for determining when to obtain an appraisal for such transactions. For example, an institution should consider obtaining an appraisal as an institution's portfolio risk increases or for higher risk real estate-related financial transactions, such as those involving:

- Loans with combined loan-to-value ratios in excess of the supervisory loan-to-value limits.
- Atypical properties.
- Properties outside the institution's traditional lending market.
- Transactions involving existing extensions of credit with significant risk to the institution.
- Borrowers with high risk characteristics.

XII. Evaluation Development

An evaluation must be consistent with safe and sound banking practices and should support the institution's decision to engage in the transaction. An institution should be able to demonstrate that an evaluation, whether prepared by an individual or supported by an analytical method or a technological tool, provides a reliable estimate of the collateral's market value as of a stated effective date prior to the decision to enter into a transaction. (Refer to Appendix B, *Evaluations Based on Analytical Methods or Technological Tools*.)

A valuation method that does not provide a property's market value or sufficient information and analysis to support the value conclusion is not acceptable as an evaluation. For example, a valuation method that provides a sales or list price, such as a broker price opinion, cannot be used as an evaluation because, among other things, it does not provide a property's market value. Further, the Dodd-Frank Act provides "[i]n conjunction with the purchase of a consumer's principal dwelling, broker price opinions may not be used as the primary basis to determine the value of a piece of property for the purpose of loan origination of a residential mortgage loan secured by such piece of property."[30] Likewise, information on local housing conditions and trends, such as a competitive market analysis, does not contain sufficient information on a specific property that is needed, and therefore, would not be acceptable as an evaluation. The information obtained from such sources, while insufficient as an evaluation, may be useful to develop an evaluation or appraisal.

An institution should establish policies and procedures for determining an appropriate collateral valuation method for a given transaction considering associated risks. These policies and procedures should address the process for selecting the appropriate valuation method for a transaction rather than using the method that renders the highest value, lowest cost, or fastest turnaround time.

[30] Dodd-Frank Act, Section 1473(r).

A valuation method should address the property's actual physical condition and characteristics as well as the economic and market conditions that affect the estimate of the collateral's market value. It would not be acceptable for an institution to base an evaluation on unsupported assumptions, such as a property is in "average" condition, the zoning will change, or the property is not affected by adverse market conditions. Therefore, an institution should establish criteria for determining the level and extent of research or inspection necessary to ascertain the property's actual physical condition, and the economic and market factors that should be considered in developing an evaluation. An institution should consider performing an inspection to ascertain the actual physical condition of the property and market factors that affect its market value. When an inspection is not performed, an institution should be able to demonstrate how these property and market factors were determined.

XIII. Evaluation Content

An evaluation should contain sufficient information detailing the analysis, assumptions, and conclusions to support the credit decision. An evaluation's content should be documented in the credit file or reproducible. The evaluation should, at a minimum:

- Identify the location of the property.
- Provide a description of the property and its current and projected use.
- Provide an estimate of the property's market value in its actual physical condition, use and zoning designation as of the effective date of the evaluation (that is, the date that the analysis was completed), with any limiting conditions.
- Describe the method(s) the institution used to confirm the property's actual physical condition and the extent to which an inspection was performed.
- Describe the analysis that was performed and the supporting information that was used in valuing the property.
- Describe the supplemental information that was considered when using an analytical method or technological tool.
- Indicate all source(s) of information used in the analysis, as applicable, to value the property, including:
    - External data sources (such as market sales databases and public tax and land records);
    - Property-specific data (such as previous sales data for the subject property, tax assessment data, and comparable sales information);
    - Evidence of a property inspection;

- Photos of the property;
- Description of the neighborhood; or
- Local market conditions.

- Include information on the preparer when an evaluation is performed by a person, such as the name and contact information, and signature (electronic or other legally permissible signature) of the preparer.

(See Appendix B, *Evaluations Based on Analytical Methods or Technological Tools*, for guidance on the appropriate use of analytical methods and technological tools for developing an evaluation.)

XIV. Validity of Appraisals and Evaluations

The Agencies allow an institution to use an existing appraisal or evaluation to support a subsequent transaction in certain circumstances. Therefore, an institution should establish criteria for assessing whether an existing appraisal or evaluation continues to reflect the market value of the property (that is, remains valid). Such criteria will vary depending upon the condition of the property and the marketplace, and the nature of the transaction. The documentation in the credit file should provide the facts and analysis to support the institution's conclusion that the existing appraisal or evaluation may be used in the subsequent transaction. A new appraisal or evaluation is necessary if the originally reported market value has changed due to factors such as:

- Passage of time.
- Volatility of the local market.
- Changes in terms and availability of financing.
- Natural disasters.
- Limited or over supply of competing properties.
- Improvements to the subject property or competing properties.
- Lack of maintenance of the subject or competing properties.
- Changes in underlying economic and market assumptions, such as capitalization rates and lease terms.
- Changes in zoning, building materials, or technology.
- Environmental contamination.

XV. Reviewing Appraisals and Evaluations

The Agencies' appraisal regulations specify that appraisals for federally related transactions must contain sufficient information and analysis to support an institution's decision to engage in the credit transaction. For certain transactions that do not require an appraisal, the Agencies' regulations require an institution to obtain an appropriate evaluation of real property collateral that is consistent with safe and sound banking practices.

As part of the credit approval process and prior to a final credit decision, an institution should review appraisals and evaluations to ensure that they comply with the Agencies' appraisal regulations and are consistent with supervisory guidance and its own internal policies. This review also should ensure that an appraisal or evaluation contains sufficient information and analysis to support the decision to engage in the transaction.

Through the review process, the institution should be able to assess the reasonableness of the appraisal or evaluation, including whether the valuation methods, assumptions, and data sources are appropriate and well-supported. An institution may use the review findings to monitor and evaluate the competency and ongoing performance of appraisers and persons who perform evaluations. (See the discussion in these Guidelines on *Selection of Appraisers or Persons Who Perform Evaluations*.)

When an institution identifies an appraisal or evaluation that is inconsistent with the Agencies' appraisal regulations and the deficiencies cannot be resolved with the appraiser or person who performed the evaluation, the institution must obtain an appraisal or evaluation that meets the regulatory requirements prior to making a credit decision. Though a reviewer cannot change the value conclusion in the original appraisal, an appraisal review performed by an appropriately qualified and competent state certified or licensed appraiser in accordance with USPAP may result in a second opinion of market value. An institution may rely on the second opinion of market value obtained through an acceptable USPAP-compliant appraisal review to support its credit decision.

An institution's policies and procedures for reviewing appraisals and evaluations, at a minimum, should:

- Address the independence, educational and training qualifications, and role of the reviewer.
- Reflect a risk-focused approach for determining the depth of the review.
- Establish a process for resolving any deficiencies in appraisals or evaluations.
- Set forth documentation standards for the review and the resolution of noted deficiencies.

A. Reviewer Qualifications

An institution should establish qualification criteria for persons who are eligible to review appraisals and evaluations. Persons who review appraisals and evaluations should be independent of the transaction and have no direct or indirect interest, financial or otherwise, in the property or transaction, and be independent of and insulated from any influence by loan production staff. Reviewers also should possess the requisite education, expertise, and competence to perform the review commensurate with the complexity of the transaction, type of real property, and market. Further, reviewers should be capable of assessing whether the appraisal or evaluation contains sufficient information and analysis to support the institution's decision to engage in the transaction.

A small or rural institution or branch with limited staff should implement prudent safeguards for reviewing appraisals and evaluations when absolute lines of independence cannot be achieved. Under these circumstances, the review may be part of the originating loan officer's overall credit analysis, as long as the originating loan officer abstains from directly or indirectly approving or voting to approve the loan.

An institution should assess the level of in-house expertise available to review appraisals for complex projects, high-risk transactions, and out-of-market properties. An institution may find it appropriate to employ additional personnel or engage a third party to perform the reviews. When using a third party, an institution remains responsible for the quality and adequacy of the review process, including the qualification standards for reviewers. (See the discussion in these Guidelines on *Third Party Arrangements*.)

B. Depth of Review

An institution should implement a risk-focused approach for determining the depth of the review needed to ensure that appraisals and evaluations contain sufficient information and analysis to support the institution's decision to engage in the transaction. This process should differentiate between high- and low-risk transactions so that the review is commensurate with the risk. The depth of the review should be sufficient to ensure that the methods, assumptions, data sources, and conclusions are reasonable, well-supported, and appropriate for the transaction, property, and market. The review also should consider the process through which the appraisal or evaluation is obtained, either directly by the institution or from another financial services institution. The review process should be commensurate with the type of transaction as discussed below:

- **Commercial Real Estate**. An institution should ensure that appraisals or evaluations for commercial real estate transactions are subject to an appropriate level of review. Transactions involving complex properties or high-risk commercial loans should be reviewed more comprehensively to assess the technical quality of the appraiser's analysis. For example, an institution should perform a more comprehensive review of transactions involving large-dollar credits, loans secured by complex or specialized properties, and properties outside the institution's traditional lending market. Persons performing such reviews should have the appropriate expertise and knowledge relative to the type of property and its market.

The depth of the review of appraisals and evaluations completed for commercial properties securing lower risk transactions may be less technical in nature, but still should provide meaningful results that are commensurate with the size, type, and complexity of the underlying credit transaction. In addition, an institution should establish criteria for when to expand the depth of the review.

- **1-to-4 Family Residential Real Estate.** The reviews for residential real estate transactions should reflect a risk-focused approach that is commensurate with the size, type, and complexity of the underlying credit transaction, as well as loan and portfolio risk characteristics. These risk factors could include debt-to-income ratios, loan-to-value ratios, level of documentation, transaction dollar amount, or other relevant factors. With prior approval from its primary federal regulator, an institution may employ various techniques, such as automated tools or sampling methods, for performing pre-funding reviews of appraisals or evaluations supporting lower risk residential mortgages. When using such techniques, an institution should maintain sufficient data and employ appropriate screening parameters to provide adequate quality assurance and should ensure that the work of all appraisers and persons performing evaluations is periodically reviewed. In addition, an institution should establish criteria for when to expand the depth of the review.

  An institution may use sampling and audit procedures to verify the seller's representations and warranties that the appraisals for the underlying loans in a pool of residential loans satisfy the Agencies' appraisal regulations and are consistent with supervisory guidance and an institution's internal policies. If an institution is unable to confirm that the appraisal meets the Agencies' appraisal requirements, then the institution must obtain an appraisal prior to engaging in the transaction.

- **Appraisals from Other Financial Services Institutions.**[31] The Agencies' appraisal regulations specify that an institution may use an appraisal that was prepared by an appraiser engaged directly by another financial services institution, provided the institution determines that the appraisal conforms to the Agencies' appraisal regulations and is otherwise acceptable. An institution should assess whether to use the appraisal prior to making a credit decision. An institution should subject such appraisals to at least the same level of review that the institution performs on appraisals it obtains directly for similar properties and document its review in the credit file. The documentation of the review should support the institution's reliance on the appraisal. Among other considerations, an institution should confirm that:

  - The appraiser was engaged directly by the other financial services institution.
  - The appraiser had no direct, indirect, or prospective interest, financial or otherwise, in the property or transaction.

[31] An institution generally should not rely on an evaluation prepared by or for another financial services institution because it will not have sufficient information relative to the other institution's risk management practices for developing evaluations.

- The financial services institution (not the borrower) ordered the appraisal. For example, an engagement letter should show that the financial services institution, not the borrower, engaged the appraiser.

An institution must not accept an appraisal that has been readdressed or altered by the appraiser with the intent to conceal the original client. Altering an appraisal report in a manner that conceals the original client or intended users of the appraisal is misleading, does not conform to USPAP, and violates the Agencies' appraisal regulations.

C. Resolution of Deficiencies

An institution should establish policies and procedures for resolving any inaccuracies or weaknesses in an appraisal or evaluation identified through the review process, including procedures for:

- Communicating the noted deficiencies to and requesting correction of such deficiencies by the appraiser or person who prepared the evaluation. An institution should implement adequate internal controls to ensure that such communications do not result in any coercion or undue influence on the appraiser or person who performed the evaluation.

- Addressing significant deficiencies in the appraisal that could not be resolved with the original appraiser by obtaining a second appraisal or relying on a review that complies with Standards Rule 3 of USPAP and is performed by an appropriately qualified and competent state certified or licensed appraiser prior to the final credit decision.

- Replacing evaluations prior to the credit decision that do not provide credible results or lack sufficient information to support the final credit decision.

D. Documentation of the Review

An institution should establish policies for documenting the review of appraisals and evaluations in the credit file. Such policies should address the level of documentation needed for the review, given the type, risk and complexity of the transaction. The documentation should describe the resolution of any appraisal or evaluation deficiencies, including reasons for obtaining and relying on a second appraisal or evaluation. The documentation also should provide an audit trail that documents the resolution of noted deficiencies or details the reasons for relying on a second opinion of market value.

XVI. Third Party Arrangements

An institution that engages a third party to perform certain collateral valuation functions on its behalf is responsible for understanding and managing the risks associated with the arrangement. An institution should use caution if it engages a third party to administer any part of its appraisal and evaluation function, including the ordering or reviewing of appraisals and evaluations, selecting an appraiser or person to perform evaluations, or providing access to analytical methods or technological tools.

An institution is accountable for ensuring that any services performed by a third party, both affiliated and unaffiliated entities, comply with applicable laws and regulations and are consistent with supervisory guidance.[32] Therefore, an institution should have the resources and expertise necessary for performing ongoing oversight of third party arrangements.

An institution should have internal controls for identifying, monitoring, and managing the risks associated with using a third party arrangement for valuation services, including compliance, legal, reputational, and operational risks. While the arrangement may allow an institution to achieve specific business objectives, such as gaining access to expertise that is not available internally, the reduced operational control over outsourced activities poses additional risk. Consistent with safe and sound practices, an institution should have a written contract that clearly defines the expectations and obligations of both the financial institution and the third party, including that the third party will perform its services in compliance with the Agencies' appraisal regulations and consistent with supervisory guidance.

Prior to entering into any arrangement with a third party for valuation services, an institution should compare the risks, costs, and benefits of the proposed relationship to those associated with using another vendor or conducting the activity in-house. The decision to outsource any part of the collateral valuation function should not be unduly influenced by any short-term cost savings. An institution should take into account all aspects of the long-term effect of the relationship, including the managerial expertise and associated costs for effectively monitoring the arrangement on an ongoing basis.

If an institution outsources any part of the collateral valuation function, it should exercise appropriate due diligence in the selection of a third party. This process should include sufficient analysis by the institution to assess whether the third party provider can perform the services consistent with the institution's performance standards and regulatory requirements. An institution should be able to demonstrate that its policies and procedures establish effective internal controls to monitor and periodically assess the collateral valuation functions performed by a third party.

An institution also is responsible for ensuring that a third party selects an appraiser or a person to perform an evaluation who is competent and independent, has the requisite experience and training for the assignment, and thorough knowledge of the subject property's market. Appraisers must be appropriately certified or licensed, but this minimum credentialing requirement, although necessary, is not sufficient to determine that an appraiser is competent to perform an assignment for a particular property or geographic market.

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[32] See, for example, FFIEC *Statement on Risk Management of Outsourced Technology Service* (November 28, 2000) for guidance on the assessment, selection, contract review, and monitoring of a third party that provides services to a regulated institution. Refer to the institution's primary federal regulator for additional guidance on third party arrangements: OCC Bulletin 2001-47, *Third-Party Relationships* (November 1, 2001); OTS Thrift Bulletin 82a, *Third Party Arrangements* (September 1, 2004); NCUA Letter to Credit Unions: 01-CU-20, *Due Diligence Over Third Party Service Arrangements* (November 2001), 07-CU-13, Supervisory Letter-*Evaluation Third Party Relationships* (December 2007), 08-CU-09, *Evaluating Third Party Relationships Questionnaire* (April 2008); and FDIC Financial Institution Letter 44-2008, *Guidance for Managing Third-Party Risk* (June 2008).

An institution should ensure that when a third party engages an appraiser or a person who performs an evaluation, the third party conveys to that person the intended use of the appraisal or evaluation and that the regulated institution is the client. For example, an engagement letter facilitates the communication of this information.

An institution's risk management system should reflect the complexity of the outsourced activities and associated risk. An institution should document the results of ongoing monitoring efforts and periodic assessments of the arrangement(s) with a third party for compliance with applicable regulations and consistency with supervisory guidance and its performance standards. If deficiencies are discovered, an institution should take remedial action in a timely manner.

XVII. Program Compliance

Deficiencies in an institution's appraisal and evaluation program that result in violations of the Agencies' appraisal regulations or contraventions of the Agencies' supervisory guidance reflect negatively on management. An institution's appraisal and evaluation policies should establish internal controls to promote an effective appraisal and evaluation program. The compliance process should:

- Maintain a system of adequate controls, verification, and testing to ensure that appraisals and evaluations provide credible market values.
- Insulate the persons responsible for ascertaining the compliance of the institution's appraisal and evaluation function from any influence by loan production staff.
- Ensure the institution's practices result in the selection of appraisers and persons who perform evaluations with the appropriate qualifications and demonstrated competency for the assignment.
- Establish procedures to test the quality of the appraisal and evaluation review process.
- Use, as appropriate, the results of the institution's review process and other relevant information as a basis for considering a person for a future appraisal or evaluation assignment.
- Report appraisal and evaluation deficiencies to appropriate internal parties and, if applicable, to external authorities in a timely manner.

A. Monitoring Collateral Values

Consistent with the Agencies' real estate lending regulations and guidelines,[33] an institution should monitor collateral risk on a portfolio and on an individual credit basis.

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[33] OCC: 12 CFR part 34, subpart D; FRB: 12 CFR part 208, subpart E; FDIC: 12 CFR part 365; OTS: 12 CFR 560.100 and 560.101; and NCUA: 12 CFR 701.21.

Therefore, an institution should have policies and procedures that address the need for obtaining current collateral valuation information to understand its collateral position over the life of a credit and effectively manage the risk in its real estate credit portfolios. The policies and procedures also should address the need to obtain current valuation information for collateral supporting an existing credit that may be modified or considered for a loan workout.

Under their appraisal regulations, the Agencies reserve the right to require an institution to obtain an appraisal or evaluation when there are safety and soundness concerns on an existing real estate secured credit. Therefore, an institution should be able to demonstrate that sufficient information is available to support the current market value of the collateral and the classification of a problem real estate credit. When such information is not available, an examiner may direct an institution to obtain a new appraisal or evaluation in order to have sufficient information to understand the current market value of the collateral. Examiners would be expected to provide an institution with a reasonable amount of time to obtain a new appraisal or evaluation.

B. Portfolio Collateral Risk

Prudent portfolio monitoring practices include criteria for determining when to obtain a new appraisal or evaluation. Among other considerations, the criteria should address deterioration in the credit since origination or changes in market conditions. Changes in market conditions could include material changes in current and projected vacancy, absorption rates, lease terms, rental rates, and sale prices, including concessions and overruns and delays in construction costs. Fluctuations in discount or direct capitalization rates also are indicators of changing market conditions.

In assessing whether changes in market conditions are material, an institution should consider the individual and aggregate effect of these changes on its collateral protection and the risk in its real estate lending programs or credit portfolios. Moreover, as an institution's reliance on collateral becomes more important, its policies and procedures should:

- Ensure that timely information is available to management for assessing collateral and associated risk.

- Specify when new or updated collateral valuations are appropriate or desirable to understand collateral risk in the transaction(s).

- Delineate the valuation method to be employed after considering the property type, current market conditions, current use of the property, and the relevance of the most recent appraisal or evaluation in the credit file.

Consistent with sound collateral valuation monitoring practices, an institution can use a variety of techniques for monitoring the effect of collateral valuation trends on portfolio risk. Sources of relevant information may include external market data, internal data, or reviews of recently obtained appraisals and evaluations. An institution should be able to demonstrate that it has sufficient, reliable, and timely information on market trends to understand the risk associated with its lending activity.

C. Modifications and Workouts of Existing Credits

An institution may find it appropriate to modify a loan or to engage in a workout with an existing borrower. The Agencies expect an institution to consider current collateral valuation information to assess its collateral risk and facilitate an informed decision on whether to engage in a modification or workout of an existing real estate credit. (See the discussion above on *Portfolio Collateral Risk.)*

- **Loan Modifications.** A loan modification to an existing credit that involves a limited change(s)[34] in the terms of the note or loan agreement and that does not adversely affect the institution's real estate collateral protection after the modification does not rise to the level of a new real estate-related financial transaction for purposes of the Agencies' appraisal regulations. As a result, an institution would not be required to obtain either a new appraisal or evaluation to comply with the Agencies' appraisal regulations, but should have an understanding of its collateral risk. For example, institutions can use automated valuation models or other valuation techniques when considering a modification to a residential mortgage loan. An institution should have procedures for ensuring an alternative collateral valuation method provides reliable information. In addition, an institution should be able to demonstrate that a modification reflects prudent underwriting standards and is consistent with safe and sound lending practices. Examiners will assess the adequacy of valuation information an institution uses for loan modifications.

- **Loan Workouts.** As noted under "Monitoring Collateral Values," an institution's policies and procedures should address the need for current information on the value of real estate collateral supporting a loan workout. A loan workout can take many forms, including a modification that adversely affects the institution's real estate collateral protection after the modification, a renewal or extension of loan terms, the advancement of new monies, or a restructuring with or without concessions. These types of loan workouts are new real estate-related financial transactions.

  If the loan workout does not include the advancement of new monies other than reasonable closing costs, the institution may obtain an evaluation in lieu of an appraisal. For loan workouts that involve the advancement of new monies, an institution may obtain an evaluation in lieu of an appraisal provided there has been no obvious and material change in market conditions and no change in the physical aspects of the property that threatens the adequacy of the institution's real estate collateral protection after the workout.[35]

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[34] A loan modification that entails a decrease in the interest rate or a single extension of a limited or short-term nature would not be viewed as a subsequent transaction. For example, an extension arising from a short-term delay in the full repayment of the loan when there is documented evidence that payment from the borrower is forthcoming, or a brief delay in the scheduled closing on the sale of a property when there is evidence that the closing will be completed in the near term.

[35] Under the NCUA's appraisal regulation, a credit union must meet both conditions to avoid the need for an appraisal. If a transaction does not involve an advancement of new monies and there have been no obvious and material changes in market or property conditions, a credit union must obtain a written estimate of market value that is consistent with the standards for evaluations as discussed in these Guidelines. 12 CFR 722.3(d).

In these cases, an institution should support and document its rationale for using this exemption. An institution must obtain an appraisal when a loan workout involves the advancement of new monies and there is an obvious and material change in either market conditions or physical aspects of the property, or both, that threatens the adequacy of the institution's real estate collateral protection after the workout (unless another exemption applies)[36]. (See also Appendix A, *Appraisal Exemptions*, for transactions where an evaluation would be allowed in lieu of an appraisal.)

- **Collateral Valuation Policies for Modifications and Workouts.** An institution's policies should address the need for obtaining current collateral valuation information for a loan modification or workout. The policies should specify the valuation method to be used and address the need to monitor collateral risk on an ongoing basis taking into consideration changing market conditions and the borrower's repayment performance. An institution also should be able to demonstrate that the collateral valuation method used is reliable for a given credit or loan type.

  Further, for loan workouts, an institution's policies should specify conditions under which an appraisal or evaluation will be obtained. As loan repayment becomes more dependent on the sale of collateral, an institution's policies should address the need to obtain an appraisal or evaluation for safety and soundness reasons even though one is not otherwise required by the Agencies' appraisal regulations.

XVIII. Referrals

An institution should file a complaint with the appropriate state appraiser regulatory officials when it suspects that a state certified or licensed appraiser failed to comply with USPAP, applicable state laws, or engaged in other unethical or unprofessional conduct. In addition, effective April 1, 2011, an institution must file a complaint with the appropriate state appraiser certifying and licensing agency under certain circumstances.[37]

An institution also must file a suspicious activity report (SAR) with the Financial Crimes Enforcement Network of the Department of the Treasury (FinCEN) when suspecting fraud or identifying other transactions meeting the SAR filing criteria.[38] Examiners finding evidence of unethical or unprofessional conduct by appraisers should instruct the institution to file a complaint with state appraiser regulatory officials and, when required, to file a SAR with FinCEN. If there is a concern regarding the institution's ability or willingness to file a complaint or make a referral, examiners should forward their findings and recommendations to their supervisory office for appropriate disposition and referral to state appraiser regulatory officials and FinCEN, as necessary.

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[36] For example, if the transaction value is below the appraisal threshold of $250,000.

[37] See 12 CFR 226.42(g).

[38] Refer to federal regulations at FRB: 12 CFR 208.62, 211.5(k), 211.24(f), and 225.4(f); FDIC: 12 CFR part 353; NCUA: 12 CFR part 748; OCC: 12 CFR 21.11; OTS: 12 CFR 563.180; and FinCEN: 31 CFR 103.18. Refer also to the *Federal Financial Institutions Examination Council Bank Secrecy Act/Anti-Money Laundering Examination Manual* (Revised April 29, 2010) to review the general criteria, but note that instructions on filing a SAR through the Financial Crime Enforcement Network (FinCEN) of the Department of the Treasury are attached to the SAR form. The SAR form is available on FinCEN's website.

Appendix A
Appraisal Exemptions

Under Title XI of FIRREA, the Agencies were granted the authority to identify categories of real estate-related financial transactions that do not require the services of an appraiser to protect federal financial and public policy interests or to satisfy principles of safe and sound lending. Therefore, in their appraisal regulations, the Agencies identified certain real estate-related financial transactions that do not require the services of an appraiser and that are exempt from the appraisal requirement. This appendix provides further clarification on the application of these regulatory exemptions and should be read in the context of each Agency's appraisal regulation. If an institution has a question as to whether a particular transaction qualifies for an exemption, the institution should seek guidance from its primary federal regulator. For those transactions qualifying for the appraisal threshold, existing extensions of credit, or the business loan exemptions, an institution is exempted from the appraisal requirement, but still must, at a minimum, obtain an evaluation consistent with these Guidelines.[39]

1. Appraisal Threshold

For transactions with a transaction value equal to or less than $250,000, the Agencies' appraisal regulations, at a minimum, require an evaluation consistent with safe and sound banking practices.[40] If an institution enters into a transaction that is secured by several individual properties that are not part of a tract development, the estimate of value of each individual property should determine whether an appraisal or evaluation would be required for that property. For example, an institution makes a loan secured by seven commercial properties in different markets with two properties valued in excess of the appraisal threshold and five properties valued less than the appraisal threshold. An institution would need to obtain an appraisal on the two properties valued in excess of the appraisal threshold and evaluations on the five properties below the appraisal threshold, even though the aggregate loan commitment exceeds the appraisal threshold.

2. Abundance of Caution

An institution may take a lien on real estate and be exempt from obtaining an appraisal if the lien on real estate is taken by the lender in an abundance of caution. This exemption is intended to have limited application, especially for real estate loans secured by residential properties in which the real estate is the only form of collateral. In order for a business loan to qualify for the abundance of caution exemption, the Agencies expect the extension of credit to be well supported by the borrower's cash flow or collateral other than real property. The institution's credit analysis should verify and document the adequacy and reliability of these repayment sources and conclude that knowledge of the market value of the real estate on which the lien will be taken as an abundance of caution is unnecessary in making the credit decision.

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[39] NCUA's regulations do not provide an exemption from the appraisal requirements specific to member business loans.

[40] NCUA's appraisal regulation requires a written estimate of market value, performed by a qualified and experienced person who has no interest in the property, for transactions equal to or less than the appraisal threshold and transactions involving an existing extension of credit. 12 CFR 722.3(d).

An institution should not invoke the abundance of caution exemption if its credit analysis reveals that the transaction would not be adequately secured by sources of repayment other than the real estate, even if the contributory value of the real estate collateral is low relative to the entire collateral pool and other repayment sources. Similarly, the exemption should not be applied to a loan or loan program unless the institution verifies and documents the primary and secondary repayment sources. In the absence of verification of the repayment sources, this exemption should not be used merely to reduce the cost associated with obtaining an appraisal, to minimize transaction processing time, or to offer slightly better terms to a borrower than would be otherwise offered.

In addition, prior to making a final commitment to the borrower, the institution should document and retain in the credit file the analysis performed to verify that the abundance of caution exemption has been appropriately applied. If the operating performance or financial condition of the company subsequently deteriorates and the lender determines that the real estate will be relied upon as a repayment source, an appraisal should then be obtained, unless another exemption applies.

3. Loans Not Secured by Real Estate

An institution is not required to obtain an appraisal on a loan that is not secured by real estate, even if the proceeds of the loan are used to acquire or improve real property.[41] For loans covered by this exemption, the real estate has no direct effect on the institution's decision to extend credit because the institution has no legal security interest in the real estate. This exemption is not intended to be applied to real estate-related financial transactions other than those involving loans. For example, this exemption should not be applied to a transaction such as an institution's investment in real estate for its own use.

4. Liens for Purposes Other Than the Real Estate's Value

This exemption allows an institution to take liens against real estate without obtaining an appraisal to protect legal rights to, or control over, other collateral. Institutions frequently take real estate liens to protect legal rights to other collateral rather than because of the contributory value of the real estate as an individual asset. For example, an institution making a loan to a logging operation may take a lien against the real estate upon which the timber stands to ensure its access to the timber in the event of default. To apply the exemption, the institution should determine that the market value of the real estate as an individual asset is not necessary to support its decision to extend credit.

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[41] NCUA's regulations do not provide an exemption from the appraisal requirements specific to loans not secured by real estate.

5. Real Estate-Secured Business Loans

This exemption applies to business loans with a transaction value of $1 million or less when the sale of, or rental income derived from, real estate is not the primary source of repayment.[42] To apply this exemption, the Agencies expect the institution to determine that the primary source of repayment for the business loan is operating cash flow from the business rather than rental income or sale of real estate. For this type of exempted loan, under the Agencies' appraisal regulations, an institution may obtain an evaluation in lieu of an appraisal.

This exemption will not apply to transactions in which the lender has taken a security interest in real estate, but the primary source of repayment is provided by cash flow or sale of real estate in which the lender has no security interest. For example, a transaction in which a loan is secured by real estate for one project, in which the lender has taken a security interest, but will be repaid with the cash flow from real estate sales or rental income from other real estate projects, in which the lender does not have a security interest, would not qualify for the exemption. (See Appendix D, *Glossary of Terms*, for a definition of business loan.)

6. Leases

An institution is required to obtain appraisals of leases that are the economic equivalent of a purchase or sale of the leased real estate. For example, an institution must obtain an appraisal on a transaction involving a capital lease, as the real estate interest is of sufficient magnitude to be recognized as an asset of the lessee for accounting purposes. Operating leases that are not the economic equivalent of the purchase or sale of the leased property do not require appraisals.

7. Renewals, Refinancings, and Other Subsequent Transactions

Under certain circumstances, renewals, refinancings, and other subsequent transactions may be supported by evaluations rather than appraisals. The Agencies' appraisal regulations permit an evaluation for a renewal or refinancing of an existing extension of credit at the institution when either:

(i) There has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the institution's real estate collateral protection after the transaction, even with the advancement of new monies; or

(ii) There is no advancement of new monies, other than funds necessary to cover reasonable closing costs.[43]

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[42] NCUA's appraisal regulation, 12 CFR 722, does not define "business loan." A "member business loan" is regulated under 12 CFR 723.

[43] Under the NCUA's appraisal regulation, a credit union must meet both conditions to avoid the need for an appraisal. If a transaction does not involve an advancement of new monies and there have been no obvious and material changes in market or property conditions, a credit union must obtain a written estimate of market value that is consistent with the standards for evaluations as discussed in these Guidelines. 12 CFR 722.3(d).

A subsequent transaction is exempt from the appraisal requirement if no new monies are advanced (other than funds necessary to cover reasonable closing costs) even when there has been an obvious and material change in market conditions or the physical aspects of the property that threatens the adequacy of the institution's real estate collateral protection. Conversely, when new monies are advanced (other than funds necessary to cover reasonable closing costs) and there has been an obvious and material change in market conditions or the physical aspects of the property that threaten the adequacy of the institution's real estate collateral protection, the institution must obtain an appraisal unless another exemption applies.

For the purposes of these Guidelines, an institution is considered to have advanced new monies (excluding reasonable closing costs) when there is an increase in the principal amount of the loan over the amount of principal outstanding before the renewal or refinancing. For example, an institution originated a 15-year term loan for $3 million and, in year 14, the outstanding principal is $2.5 million. In year 14, the borrower seeks to refinance the loan at a lower interest rate and requests a loan of $2.8 million. The $300,000 would be considered new monies. On the other hand, an institution has provided a $5 million revolving line of credit to a borrower for two years and, at the end of year two, renews the $5 million line for another two years. At the time of renewal, the borrower has drawn down $1 million. In this example, the amount of the line remains unchanged even though the amount available on the line is less than the line commitment. Renewing the line of credit at its original amount would not be considered an advancement of new monies. Further, when an institution advances funds to protect its interest in a property, such as to repair damaged property, a new appraisal or evaluation would not be required because these funds would be used to restore the damaged property to its original condition.

To satisfy the condition for no obvious and material change in market conditions or the physical aspects of the property, the current or planned future use of the property should be consistent with the use identified in the existing appraisal or evaluation. For example, if a property has reportedly increased in value because of a planned change in use of the property resulting from rezoning, an appraisal should be performed unless another exemption applies.

If an evaluation is permitted under this exemption, an institution may use an existing appraisal or evaluation as long as the institution verifies and documents that the appraisal or evaluation continues to be valid. (See the discussion in the *Validity of Appraisals and Evaluations* section of these Guidelines.) Even if a subsequent transaction qualifies for this exemption, an institution should consider the risk posed by the transaction and may wish to consider obtaining a new appraisal.

Loan Workouts or Restructurings. Loan workouts, debt restructurings, loan assumptions, and similar transactions involving the addition or substitution of borrowers may qualify for the exemption for renewals, refinancings and other subsequent transactions. Use of this exemption depends on meeting the conditions listed in (i) and (ii) at the beginning of the discussion on Renewals, Refinancings, and Other Subsequent Transactions. An institution also should consider such factors as the quality of the underlying collateral and the validity of the existing appraisal or evaluation.

If a loan workout involves acceptance of new real estate collateral that facilitates the orderly collection of the credit, or reduces the institution's risk of loss, an appraisal or evaluation of the existing and new collateral may be prudent, even if it is obtained after the workout occurs and the institution perfects its security interest.

8. Transactions Involving Real Estate Notes

This exemption applies to appraisal requirements for transactions involving the purchase, sale, investment in, exchange of, or extension of credit secured by a loan or interest in a loan, pooled loans, or interests in real property, including mortgage-backed securities. If each note or real estate interest meets the Agencies' regulatory requirements for appraisals at the time the real estate note was originated, the institution need not obtain a new appraisal to support its interest in the transaction. The institution should employ audit procedures and review a representative sample of appraisals supporting pooled loans or real estate notes to determine that the conditions of the exemption have been satisfied.

Principles of safe and sound banking practices require an institution to determine the suitability of purchasing or investing in existing real estate-secured loans and real estate interests. These transactions should have been originated according to secondary market standards and have a history of performance. The information from these sources, together with original documentation, should be sufficient to allow an institution to make appropriate credit decisions regarding these transactions.

An institution may presume that the underlying loans in a marketable, mortgage-backed security satisfy the requirements of the Agencies' appraisal regulations whenever an issuer makes a public statement, such as in a prospectus, that the appraisals comply with the Agencies' appraisal regulations. A marketable security is one that may be sold with reasonable promptness at a price that corresponds to its fair value.

If the mortgages that secure the mortgage warehouse loan are sold to Fannie Mae or Freddie Mac, the sale itself may be used to demonstrate that the underlying loans complied with the Agencies' appraisal regulations. In such cases, the Agencies expect an institution to monitor its borrower's performance in selling loans to the secondary market and take appropriate steps, such as increasing sampling and auditing of the loans and the supporting documentation, if the borrower experiences more than a minimal rate of loans being put back by an investor.

9. Transactions Insured or Guaranteed by a U.S. Government Agency or U.S. Government-sponsored Agency

This exemption applies to transactions that are wholly or partially insured or guaranteed by a U.S. government agency or U.S. government-sponsored agency. The Agencies expect these transactions to meet all the underwriting requirements of the federal insurer or guarantor, including its appraisal requirements, in order to receive the insurance or guarantee.

10. Transactions that Qualify for Sale to, or Meet the Appraisal Standards of, a U.S. Government Agency or U.S. Government-sponsored Agency

This exemption applies to transactions that either (i) qualify for sale to a U.S. government agency or U.S. government-sponsored agency,[44] or (ii) involve a residential real estate transaction in which the appraisal conforms to Fannie Mae or Freddie Mac appraisal standards applicable to that category of real estate. An institution may engage in these transactions without obtaining a separate appraisal conforming to the Agencies' appraisal regulations. Given the risk to the institution that it may have to repurchase a loan that does not comply with the appraisal standards of the U.S. government agency or U.S. government-sponsored agency, the institution should have appropriate policies to confirm its compliance with the underwriting and appraisal standards of the U.S. government agency or U.S. government-sponsored agency.

10(i) An institution that relies on exemption 10(i) should maintain adequate documentation that confirms that the transaction qualifies for sale to a U.S. government agency or U.S. government-sponsored agency. If the qualification for sale is not adequately documented, the transaction should be supported by an appraisal that conforms to the Agencies' appraisal regulations, unless another exemption applies.

10(ii) To qualify for this exemption, transactions that do not conform to all of Fannie Mae or Freddie Mac underwriting standards, such as jumbo or other residential real estate loans, must be supported by an appraisal that meets these government-sponsored agencies' appraisal standards for the applicable property type and is documented in the credit file or reproducible.

11. Transactions by Regulated Institutions as Fiduciaries

An institution acting as a fiduciary is not required to obtain appraisals under the Agencies' appraisal regulations if an appraisal is not required under other laws governing fiduciary responsibilities in connection with a transaction.[45] For example, if no other law requires an appraisal in connection with the sale of a parcel of real estate to a beneficiary of a trust on terms specified in a trust instrument, an appraisal is not required under the Agencies' appraisal regulations. However, when a fiduciary transaction requires an appraisal under other laws, that appraisal should conform to the Agencies' appraisal requirements.

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[44] These government-sponsored agencies include Banks for Cooperatives; Federal Agriculture Mortgage Corporation; Federal Farm Credit Banks; Federal Home Loan Banks; Freddie Mac; Fannie Mae; and Tennessee Valley Authority.

[45] Generally, credit unions have limited fiduciary authority and NCUA's appraisal regulation does not specifically exempt transactions by fiduciaries.

12. Appraisals Not Necessary to Protect Federal Financial and Public Policy Interests or the Safety and Soundness of Financial Institutions

The Agencies retain the authority to determine when the services of an appraiser are not required in order to protect federal financial and public policy interests or the safety and soundness of financial institutions. This exemption is intended to apply to individual transactions on a case-by-case basis rather than broad categories of transactions that would otherwise be addressed by an appraisal exemption. An institution would need to seek a waiver from its supervisory federal agency before entering into the transaction.

Appendix B
Evaluations Based on Analytical Methods or Technological Tools

The Agencies' appraisal regulations permit an institution to use an evaluation in lieu of an appraisal for certain transactions. An institution may use a variety of analytical methods and technological tools for developing an evaluation, provided the institution can demonstrate that the valuation method is consistent with safe and sound banking practices and these Guidelines (see sections on *Evaluation Development and Evaluation Content*).[46] An institution should not select a method or tool solely because it provides the highest value, the lowest cost, or the fastest response or turnaround time.

An institution should establish policies and procedures that provide a sound process for using various methods or tools. Such policies and procedures should:

- Ensure staff has the requisite expertise and training to manage the selection, use, and validation of an analytical method or technological tool. If an institution does not have the in-house expertise relative to a particular method or tool, then an institution should employ additional personnel or engage a third party. (See the *Third Party Arrangements* section in these Guidelines.)

- Address the selection, use, and validation of the valuation method or tool.

- Establish criteria for determining whether a particular valuation method or tool is appropriate for a given transaction or lending activity, considering associated risks. These risks include, but are not limited to, transaction size and purpose, credit quality, and leverage tolerance (loan-to-value).

- Specify criteria when a market event or risk factor would preclude the use of a particular method or tool.

- Address standards for the use of multiple methods or tools, if applicable, for valuing the same property or to support a particular lending activity.

- Provide criteria for ensuring that the institution uses a method or tool that produces a reliable estimate of market value that supports the institution's decision to engage in a transaction.

- Address the extent to which:

    - An inspection or research is necessary to ascertain the property's actual physical condition, and

    - Supplemental information is needed to assess the effect of market conditions or other factors on the estimate of market value.

[46] For example, the sole use of data from the Internet or other public sources would not be an evaluation under these Guidelines. Additionally, valuation methods that do not contain sufficient information and analysis or provide a market value conclusion would not be acceptable as evaluations.

An institution should establish an effective system of controls for verifying that a valuation method or tool is employed in a manner consistent with internal policies and procedures. Moreover, the institution's staff responsible for internal controls should have the skills commensurate with the complexity or sophistication of the method or tool. Examiners will review an institution's policies, procedures, and internal controls to ensure that an institution's use of a method or tool is appropriate and consistent with safe and sound banking practices.

Automated Valuation Models (AVMs)

AVMs are computer programs that estimate a property's market value based on market, economic, and demographic factors. Institutions may employ AVMs for a variety of uses such as loan underwriting and portfolio monitoring. An institution may not rely solely on the results of an AVM to develop an evaluation unless the resulting evaluation is consistent with safe and sound banking practices and these Guidelines. (See the *Evaluation Development* and *Evaluation Content* sections.) For example, to be consistent with the standards for an evaluation, the results of an AVM would need to address a property's actual physical condition, and therefore, could not be based on an unsupported assumption, such as a property is in "average" condition.

Institutions should establish policies and procedures that govern the use of AVMs and specify the supplemental information that is required to develop an evaluation. When the supplemental information indicates the AVM is not an acceptable valuation tool, the institution's policies and procedures should require the use of an alternative method or tool.

Selecting an AVM(s)

When selecting an AVM or multiple AVMs, an institution should:

- Perform the necessary level of due diligence on AVM vendors and their models, including how model developers conducted performance testing as well as the sample size used and the geographic level tested (such as, county level or zip code).

- Establish acceptable minimum performance criteria for a model prior to and independent of the validation process.

- Perform a detailed validation of the model(s) considered during the selection process and document the validation process.

- Evaluate underlying data used in the model(s), including the data sources and types, frequency of updates, quality control performed on the data, and the sources of the data in states where public real estate sales data are not disclosed.

- Assess modeling techniques and the inherent strengths and weaknesses of different model types (such as hedonic, index, and blended) as well as how a model(s) performs for different property types (such as condominiums, planned unit developments, and single family detached residences).

- Evaluate the vendor's scoring system and methodology for the model(s). Determine whether the scoring system provides an appropriate indicator of model reliability by property types and geographic locations.

Following the selection of an AVM(s), an institution should develop policies and procedures to address the appropriate use of an AVM(s) and its monitoring and ongoing validation processes.

Determining AVM Use

An institution should establish policies and procedures for determining whether an AVM can be used for a particular transaction. The institution should:

- Maintain AVM performance criteria for accuracy and reliability in a given transaction, lending activity, and geographic location.[47]

- Establish internal confidence score[48] minimums, or similar criteria, for when each model can be used.

- Implement controls to preclude "value shopping" when more than one AVM is used for the same property.

- Establish procedures for obtaining an appraisal or using a different valuation method to develop an evaluation when an AVM's resulting value is not reliable to support the credit decision. For example, in areas that have experienced a high incidence of fraud, the institution should consider whether the AVM may be relied upon for the transaction or another valuation method should be used.

- Identify circumstances under which an AVM may not be used, including:

    - When market conditions warrant, such as during the aftermath of a natural disaster or a major economic event;

    - When a model's performance is outside of specified tolerances for a particular geographic market or property price-tier range; or

    - When a property is non-homogeneous, such as atypical lot sizes or property types.

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[47] For example, an institution should establish a level of acceptable core accuracy and limit exposure to a model's systemic tendency to over value properties (commonly referred to as "tail risk").

[48] A "confidence score" generally refers to a vendor's own method of quantifying how reliable a model value is by using a rank ordering process. The scale and components of a confidence score are not standardized. Therefore an institution needs to understand how a confidence score was derived and the extent to which a confidence score correlates to model accuracy. If multiple AVMs are used, an institution should understand how the combination of models affects overall accuracy.

Validating AVM Results

An institution should establish standards and procedures for independent and ongoing monitoring and model validation, including the testing of multiple AVMs, to ensure that results are credible.[49] An institution should be able to demonstrate that the depth and extent of its validation processes are consistent with the materiality of the risk and the complexity of the transaction. Validation can be performed internally or with the assistance of a third party, as long as the validation is conducted by qualified individuals that are independent of the model development or sales functions. An institution should not rely solely on validation representations provided by an AVM vendor. An institution should perform appropriate model validation regardless of whether it relies on AVMs that are supported by value insurance or guarantees. If there are insurance or guarantee components of any particular AVM, the institution is responsible for understanding the extent and limitations of the insurance policy or guarantee, and the claim process and financial strength of the insurer.

An institution should ensure that persons who validate an AVM on an ongoing basis are independent of the loan production and collection processes and have the requisite expertise and training. In the AVM validation procedures, an institution should specify, at a minimum:

- Expectations for an appropriate sample size.
- Level of geographic analysis.
- Testing frequency and criteria for re-testing.
- Standards of performance measures to be used.
- Range of acceptable performance results.

To ensure unbiased test results, an institution should compare the results of an AVM to actual sales data in a specified trade area or market prior to the information being available to the model. If an institution uses more than one AVM, each AVM should be validated. To assess the effectiveness of its AVM practices, an institution should verify whether loans in which an AVM was used to establish value met the institution's performance expectations relative to similar loans that used a different valuation process. An institution should document the results of its validation and audit findings. An institution should use these findings to analyze and periodically update its policies and procedures for an AVM(s) when warranted.

[49] See, for example, OCC Bulletin 2000-16, *Risk Modeling – Model Validation* (May 30, 2000).

Tax Assessment Valuations (TAVs)

An institution may not rely solely on the data provided by local tax authorities to develop an evaluation unless the resulting evaluation is consistent with safe and sound banking practices and these Guidelines. (See the *Evaluation Development* and *Evaluation Content* sections.) Since analytical methods such as TAVs generally need additional support to meet these Guidelines, institutions should develop policies and procedures that specify the level and extent of supplemental information that should be obtained to develop an evaluation. Such policies and procedures also should require the use of an alternate valuation method when such information does not support the transaction.

An institution may use a TAV in developing an evaluation when it can demonstrate that a valid correlation exists between the tax assessment data and the market value. In using a TAV to develop an evaluation, an institution should:

- Determine and document how the tax jurisdiction calculates the TAV and how frequently property revaluations occur.
- Perform an analysis to determine the relationship between the TAV and the property market values for properties within a tax jurisdiction.
- Test and document how closely TAVs correlate to market value based on contemporaneous sales at the time of assessment and revalidate whether the correlation remains stable as of the effective date of the evaluation.

Appendix C
Deductions and Discounts

The Agencies' appraisal regulations require an appraiser to analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units. For such transactions, an appraisal must include the market value of the property, which should reflect the property's actual physical condition, use, and zoning designation (referred to as the "as is" value of the property), as of the effective date of the appraisal. Therefore, if the highest and best use of the property is for development to a different use, the cost of demolition and site preparation should be considered in the analysis.

Proposed Construction or Renovation

For properties where improvements are to be constructed or rehabilitated, an institution may request a prospective market value upon completion and a prospective market value upon stabilization. While an institution may request the appraiser to provide the sum of retail sales for a proposed development, the result of such calculation is not the market value of the property for purposes of the Agencies' appraisal regulations.

Partially Leased Buildings

For proposed and partially leased rental developments, the appraiser must make appropriate deductions and discounts to reflect that the property has not achieved stabilized occupancy. The appraisal analysis also should include consideration of the absorption of the unleased space. Appropriate deductions and discounts should include items such as leasing commission, rent losses, tenant improvements, and entrepreneurial profit, if such profit is not included in the discount rate.

Non-market Lease Terms

For properties subject to leases with terms that do not reflect current market conditions, the appraisal must clearly state the ownership interest being appraised and provide a discussion of the leases that are in place. If the leased fee interest is being appraised and contract rent is less than market rent on one or more long term lease(s) to a highly rated tenant, the market value of the leased fee interest would be less than the market value of the unencumbered fee simple interest in the property.[50] In these situations, the market value of the leased fee interest should be used.

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[50] Fee simple interest refers to the most complete ownership unencumbered by any leases or other interests. It is subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power and escheat. Leased fee interest, on the other hand, refers to a landlord's ownership that is encumbered by one or more leases.

Tract Developments with Unsold Units

A tract development is defined in the Agencies' appraisal regulations as a project of five units or more that is constructed or is to be constructed as a single development. Appraisals for these properties must reflect deductions and discounts for holding costs, marketing costs, and entrepreneurial profit supported by market data. In some cases entrepreneurial profit may be included in the discount rate. The applicable discount rate is developed based on investor requirements and the risk associated with the physical and financial characteristics of the property. In some markets, entrepreneurial profit is treated as a line item deduction while in other markets it is reflected as a component of the discount rate.

Regardless of how entrepreneurial profit is handled in the appraisal analysis, an appropriate explanation and discussion should be provided in the appraisal report. The projected sales prices and absorption rate of units should be supported by anticipated demand at the time the units are expected to be exposed for sale. Anticipated demand for the units should be supported and presented in the appraisal. A reader of the appraisal report should be able to understand the risk characteristics associated with the subject property and the market, including the anticipated supply of competing properties.

- **Raw Land.** The appraiser must provide an opinion of value for raw land based on its current condition and existing zoning. If an appraiser employs a developmental approach to value the land that is based on projected land sales or development and sale of lots, the appraisal must reflect appropriate deductions and discounts for costs associated with developing and selling lots in the future. These costs may be incurred during the permitting, construction or selling stages of development. Appropriate deductions and discounts should include items such as feasibility studies, permitting, engineering, holding costs, marketing costs, and entrepreneurial profit and other costs specific to the property. If sufficient market data exists to perform both the sales comparison and developmental approaches to value, the appraisal report should detail a reconciliation of these two approaches in arriving at a market value conclusion for the raw land.

- **Developed Lots.** For existing or proposed developments of five or more residential lots in a single development, the appraiser must analyze and report appropriate deductions and discounts. Appropriate deductions and discounts should reflect holding costs, marketing costs, and entrepreneurial profit during the sales absorption period for the sale of the developed lots. The estimated sales absorption period should reflect the appraiser's estimate of the time frame for the actual development and sale of the lots, starting on the effective date of value and ending as of the expected date of the last lot sale. The absorption period should be based on market demand for lots in light of current and expected competition for similar lots in the market area.

- **Attached or Detached Single-family Homes.** For proposed construction and sale of five or more attached or detached single-family homes in the same development, the appraiser must analyze and report appropriate deductions and discounts. Appropriate deductions and discounts should reflect holding costs, marketing costs, and entrepreneurial profit during the sales absorption period of the completed units. If an institution finances construction on an individual unit basis, an appraisal of the individual units may be used if the institution can demonstrate through an independently obtained feasibility study or market analysis that all units collateralizing the loan can be constructed and sold within 12 months. However, the transaction should be supported by an appraisal that analyzes and reports appropriate deductions and discounts if any of the individual units are not completed and sold within the 12-month time frame.

- **Condominiums.** For proposed construction and sale of a condominium building with five or more units, the appraisal must reflect appropriate deductions and discounts. Appropriate deductions and discounts should include holding costs, marketing costs, and entrepreneurial profit during the sales absorption period of the completed units. If an institution finances construction of a single condominium building with less than five units or a condominium project with multiple buildings with less than five units per building, the institution may rely on appraisals of the individual units if the institution can demonstrate through an independently obtained feasibility study or market analysis that all units collateralizing the loan can be constructed and sold within 12 months. However, the transaction should be supported by an appraisal that analyzes and reports appropriate deductions and discounts if any of the individual units are not completed and sold within the 12-month time frame.

Appendix D
Glossary of Terms

Agent – The Agencies' appraisal regulations do not specifically define the term "agent." However, the term is generally intended to refer to one who undertakes to transact business or to manage business affairs for another. According to the Agencies' appraisal regulations, fee appraisers must be engaged directly by the federally regulated institution or its agent,[51] and have no direct or indirect interest, financial or otherwise, in the property or the transactions. The Agencies do not limit the arrangements that federally regulated institutions have with their agents, provided those arrangements do not place the agent in a conflict of interest that prevents the agent from representing the interests of the federally regulated institution.

Appraisal – As defined in the Agencies' appraisal regulations, a written statement independently and impartially prepared by a qualified appraiser (state licensed or certified) setting forth an opinion as to the market value of an adequately described property as of a specific date(s), supported by the presentation and analysis of relevant market information.

Appraisal Management Company – The Agencies' appraisal regulations do not define the term appraisal management company. For purposes of these Guidelines, an "appraisal management company" includes, but is not limited to, a third-party entity that provides real property valuation-related services, such as selecting and engaging an appraiser to perform an appraisal based upon requests originating from a regulated institution. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) has a specific definition for this term in connection with transactions secured by a consumer's principal dwelling or mortgage secondary market transactions. See the *Third Party Arrangements* section in these Guidelines.

Appraisal Report Options – Refer to the definitions for Restricted Use Appraisal Report, Self-Contained Appraisal Report, and Summary Appraisal Report.

Appraisal Threshold – An appraisal is not required on transactions with a transaction value of $250,000 or less. As specified in the Agencies' appraisal regulations, an institution must obtain an evaluation of the real property collateral, if no other appraisal exemption applies.

Approved Appraiser List – A listing of appraisers who an institution has determined to be generally qualified and competent to perform appraisals and may address the appraiser's expertise in a particular market and property type.

"As Completed" Market Value – Refer to the definition for Prospective Market Value.

"As Is" Market Value – The estimate of the market value of real property in its current physical condition, use, and zoning as of the appraisal's effective date.

"As Stabilized" Market Value – Refer to the definition for Prospective Market Value.

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[51] Except that the regulated institution also may accept an appraisal that was prepared by an appraiser engaged directly by another financial services institution in certain circumstances as set forth in the Agencies' appraisal regulations.

Automated Valuation Model – A computer program that estimates a property's market value based on market, economic, and demographic factors. Hedonic models generally use property characteristics (such as square footage and room count) and methodologies to process information, often based on statistical regression. Index models generally use geographic repeat sales data over time rather than property characteristic data. Blended or hybrid models use elements of both hedonic and index models.

Broker Price Opinion (BPO) – An estimate of the probable sales or listing price of the subject property provided by a real estate broker, sales agent, or sales person. A BPO generally provides a varying level of detail about a property's condition, market, and neighborhood, as well as comparable sales or listings. A BPO is not by itself an appraisal or evaluation, but could be used for monitoring the collateral value of an existing loan, when deemed appropriate. Further, the Dodd-Frank Act provides "[i]n conjunction with the purchase of a consumer's principal dwelling, broker price opinions may not be used as the primary basis to determine the value of a piece of property for the purpose of loan origination of a residential mortgage loan secured by such piece of property."[52]

Business Loan – As defined in the Agencies' appraisal regulations, a loan or extension of credit to any corporation, general or limited partnership, business trust, joint venture, syndicate, sole proprietorship, or other business entity.[53] A business loan includes extensions to entities engaged in agricultural operations, which is consistent with the Agencies' real estate lending guidelines definition of an improved property loan that include loans secured by farmland, timberland, and ranchland committed to ongoing management and agricultural production.

Business Loan Threshold – A business loan with a transaction value of $1,000,000 or less does not require an appraisal if the primary source of repayment is not dependent on the sale of, or rental income derived from, real estate. As specified in the Agencies' appraisal regulations, an institution must obtain an evaluation of the real property collateral.[54]

Client – According to USPAP, the party or parties who engage(s) an appraiser by employment or contract for a specific appraisal assignment. For the purposes of these Guidelines, the appraiser should be aware that the client is the regulated institution. (Refer to the section on *Third Party Arrangements* in these Guidelines.)

Credible (Appraisal) Assignment Results – According to USPAP, credible means "worthy of belief" used in the context of the Scope of Work Rule. Under this rule, credible assignment results depend on meeting or exceeding both (1) the expectations of parties who are regularly intended users for similar assignments, and (2) what an appraiser's peers' actions would be in performing the same or a similar assignment.

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[52] Dodd-Frank Act, Section 1473(r).

[53] NCUA's appraisal regulation, 12 CFR 722, does not define "business loan." A "member business loan" is regulated under 12 CFR 723.

[54] NCUA's appraisal regulation, 12 CFR 722, does not provide a higher appraisal threshold for loans defined as "member business loans" under 12 CFR 723.

Credit File – A hardcopy or electronic record that documents all information necessary to (1) analyze the credit before it is granted and (2) monitor the credit during its life. An institution may use a computerized or manual system to manage the information in its credit files.

Date of the Appraisal Report – According to USPAP, the date of the appraisal report indicates when the appraisal analysis was completed.

Effective Date of the Appraisal – USPAP requires that each appraisal report specifies the effective date of the appraisal and the date of the report. The date of the report indicates the perspective from which the appraiser is examining the market. The effective date of the appraisal establishes the context for the value opinion. Three categories of effective dates—retrospective, current, or prospective—may be used, according to the intended use of the appraisal assignment.

Effective Date of the Evaluation – For the purposes of the Agencies' appraisal regulations and these Guidelines, the effective date of an evaluation is the date that the analysis is completed.

Engagement Letter – An engagement letter between an institution and an appraiser documents the expectations of each party to the appraisal assignment. For example, an engagement letter may specify, among other items: (i) the property's location and legal description; (ii) intended use and users of the appraisal; (iii) the requirement to provide an opinion of the property's market value; (iv) the expectation that the appraiser will comply with applicable laws and regulations, and be consistent with supervisory guidance; (v) appraisal report format; (vi) expected delivery date; and (vii) appraisal fee.

Evaluation – A valuation permitted by the Agencies' appraisal regulations for transactions that qualify for the appraisal threshold exemption, business loan exemption, or subsequent transaction exemption.

Exposure Time – As defined in USPAP, the estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal. Exposure time is always presumed to precede the effective date of the appraisal. Exposure time is a function of price, time, and use – not an isolated opinion of time alone. (See USPAP Standard 1-2(c) and Statement 6.)

Extraordinary Assumption – As defined in USPAP, an assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions regarding the property's market value. An example of an extraordinary assumption is when an appraiser assumes that an application for a zoning change will be approved and there is no evidence to suggest otherwise.

Federally Regulated Institution – For purposes of the Agencies' appraisal regulations and these Guidelines, an institution that is supervised by a federal financial institutions regulatory agency. This includes a national or a state-chartered bank and its subsidiaries, a bank holding company and its non-bank subsidiaries, a federal savings association and its subsidiaries, a federal savings and loan holding company and its subsidiaries, and a credit union.

Federally Related Transaction – As defined in the Agencies' appraisal regulations, any real estate-related financial transaction in which the Agencies or any regulated institution engages or contracts for, and that requires the services of an appraiser.

Financial Services Institution – The Agencies' appraisal regulations do not contain a specific definition of the term "financial services institution." The term is intended to describe entities that provide services in connection with real estate lending transactions on an ongoing basis, including loan brokers.

Going Concern Value – The value of a business entity rather than the value of the real property. The valuation is based on the existing operations of the business and its current operating record, with the assumption that the business will continue to operate.

Hypothetical Condition – As defined in USPAP, a condition that is contrary to what exists but is supposed for the purpose of analysis. An example of a hypothetical condition is when an appraiser assumes a particular property's zoning is different from what the zoning actually is.

Loan Production Staff – Generally, all personnel responsible for generating loan volume or approving loans, as well as their subordinates and supervisors. These individuals would include any employee whose compensation is based on loan volume (such as processing or approving of loans). An employee is not considered loan production staff just because part of their compensation includes a general bonus or profit sharing plan that benefits all employees. Employees responsible solely for credit administration or credit risk management are not considered loan production staff.

Marketing Time – According to USPAP Advisory Opinion 7, the time it might take to sell the property interest at the appraised market value during the period immediately after the effective date of the appraisal. An institution may request an appraiser to separately provide an estimate of marketing time in an appraisal. However, this is not a requirement of the Agencies' appraisal regulations.

Market Value – As defined in the Agencies' appraisal regulations, the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- Buyer and seller are typically motivated;
- Both parties are well informed or well advised, and acting in what they consider their own best interests;
- A reasonable time is allowed for exposure in the open market;
- Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Presold Unit – A unit may be considered presold if a buyer has entered into a binding contract to purchase the unit and has made a substantial and non-refundable earnest money deposit. Further, the institution should obtain sufficient documentation that the buyer has entered into a legally binding sales contract and has obtained a written prequalification or commitment for permanent financing.

Prospective Market Value "as Completed" and "as Stabilized" – A prospective market value may be appropriate for the valuation of a property interest related to a credit decision for a proposed development or renovation project. According to USPAP, an appraisal with a prospective market value reflects an effective date that is subsequent to the date of the appraisal report. Prospective value opinions are intended to reflect the current expectations and perceptions of market participants, based on available data. Two prospective value opinions may be required to reflect the time frame during which development, construction, and occupancy will occur. The prospective market value "as completed" reflects the property's market value as of the time that development is expected to be completed. The prospective market value "as stabilized" reflects the property's market value as of the time the property is projected to achieve stabilized occupancy. For an income-producing property, stabilized occupancy is the occupancy level that a property is expected to achieve after the property is exposed to the market for lease over a reasonable period of time and at comparable terms and conditions to other similar properties. (See USPAP Statement 4 and Advisory Opinion 17.)

Put Back – Represents the ability of an investor to reject mortgage loans from a mortgage originator if the mortgage loans do not comply with the warranties and representations in their mortgage purchasing agreement.

Raw Land – A parcel or tract of land with no improvements, for example, infrastructure or vertical construction. When an appraisal of raw land includes entitlements, the appraisal should disclose when such entitlements will expire if improvements are not completed within a specified time period and the potential effect on the value conclusion.

Real Estate-Related Financial Transaction – As defined in the Agencies' appraisal regulations, any transaction involving:

- The sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof;
- The refinancing of real property or interests in real property; or
- The use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

Regulated Institution – Refer to the definition of Federally Regulated Institution.

Restricted Use Appraisal Report – According to USPAP Standards Rule 2-2(c), a restricted use appraisal report briefly states information significant to solve the appraisal problem as well as a reference to the existence of specific work-file information in support of the appraiser's opinions and conclusions. The Agencies believe that the restricted use appraisal report will not be appropriate to underwrite a significant number of federally related transactions due to the lack of supporting information and analysis in the appraisal report. However, it may be appropriate to use this type of appraisal report for ongoing collateral monitoring of an institution's real estate transactions and other purposes.

Sales Concessions – A cash or noncash contribution that is provided by the seller or other party to the transaction and reduces the purchaser's cost to acquire the real property. A sales concession may include, but is not limited to, the seller paying all or some portion of the purchaser's closing costs (such as prepaid expenses or discount points) or the seller conveying to the purchaser personal property which is typically not conveyed with the real property. Sales concessions do not include fees that a seller is customarily required to pay under state or local laws. In developing an opinion of market value, an appraiser must take into consideration the effect of any sales concessions on the market value of the real property. (See "market value" above and USPAP Standards Rule 1-2(c).)

Sales History and Pending Sales – According to USPAP Standards Rule 1-5, when the value opinion to be developed is market value, an appraiser must, if such information is available to the appraiser in the normal course of business, analyze: (1) all current agreements of sale, options, and listings of the subject property as of the effective date of the appraisal, and (2) all sales of the subject property that occurred within three years prior to the effective date of the appraisal.

Scope of Work – According to USPAP Scope of Work Rule, the type and extent of research and analyses in an appraisal assignment. (See the Scope of Work Rule in USPAP.)

Self-contained Appraisal Report – According to USPAP Standards Rule 2-2(a), a self-contained appraisal report is the most complete and detailed appraisal report option.

Sum of Retail Sales – A mathematical calculation of the sum of the expected sales prices of several individual properties in the same development to an individual purchaser. The sum of retail sales is not the market value for purposes of meeting the minimum appraisal standards in the Agencies' appraisal regulations.

Summary Appraisal Report – According to USPAP Standards Rule 2-2(b), the summary appraisal report summarizes all information significant to the solution of an appraisal problem while still providing sufficient information to enable the client and intended user(s) to understand the rationale for the opinions and conclusions in the report.

Tract Development – As defined in the Agencies' appraisal regulations, a project of five units or more that is constructed or is to be constructed as a single development. For purposes of these Guidelines, "unit" refers to: a residential or commercial building lot, a detached single-family home, an attached single-family home, and a residence in a condominium, cooperative, or timeshare building.

Transaction Value – As defined in the Agencies' appraisal regulations:

- For loans or other extensions of credit, the amount of the loan or extension of credit;
- For sales, leases, purchases, and investments in or exchanges of real property, the market value of the real property interest involved; and
- For the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

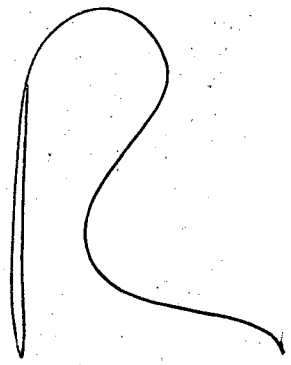
For purposes of this definition, the transaction value for loans that permit negative amortization should be the institution's total committed amount, including any potential negative amortization.

Uniform Standards of Professional Appraisal Practice (USPAP) – USPAP identifies the minimum set of standards that apply in all appraisal, appraisal review, and appraisal consulting assignments. These standards are promulgated by the Appraisal Standards Board of the Appraisal Foundation and are incorporated as a minimum appraisal standard in the Agencies' appraisal regulations.

Unsold Units – An unsold unit is a unit that does not meet the conditions listed in the definition of Presold Units.

Value of Collateral (for Use in Determining Loan-to-Value Ratio) – According to the Agencies' real estate lending standards guidelines, the term "value" means an opinion or estimate set forth in an appraisal or evaluation, whichever may be appropriate, of the market value of real property, prepared in accordance with the Agencies' appraisal regulations and these Guidelines. For loans to purchase an existing property, "value" means the lesser of the actual acquisition cost or the estimate of value.

Attach



ROBERT H. COOPER

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ATTORNEYS AT LAW

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Greenville, SC 29615
864-271-9911
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ENGAGEMENT LETTER

We are pleased that you have engaged our law firm to serve as your legal counsel. You agree that our representation is limited to the matters as described below. An engagement letter is an agreement between you and our law firm that lays out the terms of our representation, and the fees and costs associated with that representation. To the extent you wish to engage our firm to represent you regarding other matters, you will be required to sign a separate engagement agreement, describing the scope of that representation prior to our initiation of services. It is our policy to confirm in writing the nature of the engagement, and the terms of our legal representation. If you do not understand all the terms or language in this engagement letter, please advise us and ask that we explain it to your satisfaction prior to signing.

Scope of Representation: We have been engaged to represent the undersigned for the following purposes: Analysis of the debtor(s) financial situation, and rendering advice to the debtor(s) in determining the course of action to take going forward as the law firm considers substituting as counsel for the debtors' current counsel, who presently faces a motion filed by the debtors asking the Court to relieve him of all responsibility in the chapter 11 matter. The law firm agrees to become involved in the chapter 11 case in a limited capacity at the request of the debtors to attend a hearing scheduled by the Court for the purpose of determining whether or not prior counsel should be relieved of all duties involved in the case. This hearing has been scheduled for April 23, 2015, at 10:30 a.m. at the Bankruptcy Court in Columbia, SC. The law firm has agreed to review documents filed in the case as set forth on the Court's PACER system, to meet one or more debtors on Sunday, April 19, 2015, at our law firm office in Greenville, SC., to attend the hearing on April 23, and to follow up by meeting with one or more debtors immediately after the hearing to conduct a site visit of the debtors' commercial rental properties located at 1811 and 1815 Gervais Street, Columbia, SC. The law firm will charge for those limited services the sum of $2,500 payable in advance.

Subsequent to the above limited services having been performed, the parties will discuss the law firm representation of the debtors in the current chapter 11 case, and agree that said law firm and in particular Robert H. Cooper, Esquire will substitute as counsel should the Court relieve prior counsel of his duties in the case. These services will include, but not be limited to, reviewing the petition, schedules, statements of financial affairs, and other documents that have been filed thus far in this chapter 11 matter, and filing a disclosure statement and plan of reorganization, and amendments thereto as required, and representation of the debtor at a confirmation hearing, and any continued confirmation hearings. Services will also include communicating with the Office of the United States Trustee on behalf of the debtor(s) as needed. Services also include preparation and filing of a final accounting and substantial consummation documents with a final decree closing the case as the case comes to an end. Services will also include counseling the debtors as needed as to the undersigned counsel's thoughts as to the financial issues sustained by the debtors, based upon his twenty five years in conducting financial counselling in bankruptcy cases. We agree that those enumerated services are required for the handing and processing of a chapter 11 bankruptcy case. In addition to the above enumerated services, the parties agree that the undersigned counsel will at

the request of debtors ask that former counsel if removed by Order of the Court in this case disgorge fees paid to him, and that undersigned counsel will advise the Court at the April 23, 2015 hearing that the debtors will be making that request, and if former counsel fails to disgorge said fees, the undersigned counsel will file a motion with the Court requesting such disgorgement.

Those services require the fees and costs associated with the bankruptcy case, and will be billed at the following hourly charges: Fees required in business cases are billed at $95 per hour for paralegal work; $195 per hour for associate attorneys, and $295 per hour for work of Robert H. Cooper, owner of The Cooper Law Firm. The parties agree that should The Cooper Law Firm be substituted in this chapter 11 case, the debtors will pay a retainer in the amount of $12,500 in addition to the previous $2,500, and that they will do so on a schedule of installments agreed upon by the parties.

Services limited under this engagement letter

The parties have discussed the need of the debtors to obtain outside financing for their commercial properties located at 1811 and 1815 Gervais Street, Columbia, SC, since the "automatic stay" of 11 USC section 362 was vacated by Order of the Court, prior to the undersigned substituted counsel becoming involved in the chapter 11 case. Said counsel has explained to the debtors the definition and purpose of "Debtor in possession" ("DIP") financing, and agrees to provide the names and contact information of at least two nationwide lenders in "DIP" financing. Counsel further agrees to answer questions of such lenders as to the chapter 11 "case in chief." It will be the debtors' responsibility to contact such lenders, and provide any and all such documentation as such lender may require. The debtors understand that the success of obtaining such financing is based upon many factors, and that no guarantee is made by the undersigned counsel as to the debtors obtaining such financing. The debtors understand that any such financing agreement must be approved by the Bankruptcy Court the purpose of which is to protect the debtors in the bankruptcy case.

The parties have also discussed that the debtors will need outside counsel to represent them and perhaps their corporation in defending the foreclosure proceedings against the commercial properties located at 1811 and 1815 Gervais Street, Columbia, SC. The parties agree that the undersigned counsel will provide the names and contact information of at least two South Carolina attorneys, who handle such matters. The undersigned counsel further agrees to answer questions of such attorney(s) as to the chapter 11 "case in chief." It will be the debtors' responsibility to contact such attorney(s), and to provide any and all such documentation as such attorney(s) may require. Should the debtors retain such counsel, they understand that said counsel should be responsible for all aspects of handling and defending such foreclosure action as The Cooper Law Firm is representing the debtors as to the chapter 11 "case in chief," and not as to the foreclosure action. The debtors understand that any such attorney(s) retained to handle such foreclosure matter must be approved by the Bankruptcy Court the purpose of which is to protect the debtors in the bankruptcy case in spite of the fact that the "automatic stay" was vacated as to the commercial properties in question. The debtors understand that this is generally a routine matter for the Court as long as such attorney(s) do not have a conflict of interest with the debtor(s).

Services not included in this engagement letter

The debtors understand and agree that The Cooper Law Firm represents them as individuals, and does not represent any non-individual entity they may own, such as a corporation, a partnership, or a limited liability company. The debtors understand that any such entity is a separate "person" under the law, and is required to retain its own legal counsel in any matters of law it deems necessary.

Individual debtor to take charge of the bankruptcy matter

Although both debtors agree to the terms of this engagement letter as evidenced by their respective signatures below, due to the fact that Gary Washington is more familiar with the financial matters of the debtors, including their non-individual entities he operates on a daily basis, the debtors prefer that he take charge of all duties involved in the chapter 11, and by her signature as evidenced below, Michele Washington gives her consent for him to do so.

WE UNDERSTAND AND AGREE TO THE TERMS OF THIS ENGAGEMENT LETTER.

_____

Gary Allen Washington
1324 Furman Drive
Sumter, SC 29154

_____

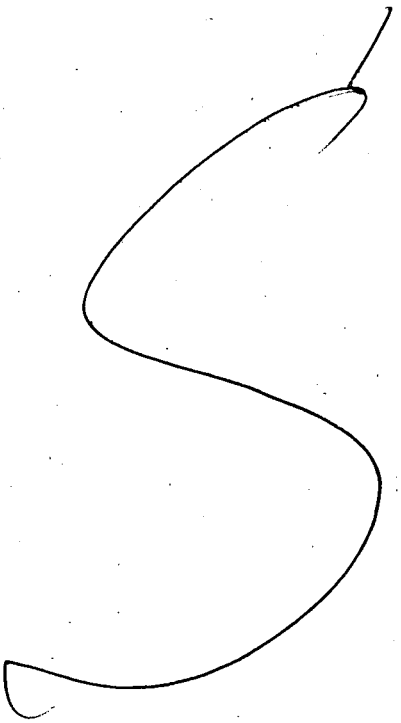
Michele Anne Washington
1324 Furman Drive
Sumter, SC 29154

_____

Robert H. Cooper, DCID#5670
The Cooper Law Firm
150 Milestone Way, Suite B
Greenville, SC 29615
864-271-9911 phone
864-232-5236 facsimile
rhcooper@thecooperlawfirm.com

Dated this 19th day of April, 2015

Attach



UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IN RE:	) Case No. 14-05589-DD
	) Chapter 11
GARY ALLEN WASHINGTON and	)
MICHELE ANNE WASHINGTON,	) 1100 Laurel Street
	) Columbia, South Carolina 29201
Debtors.	)
	) April 6, 2015
	) 2:19 p.m.

TRANSCRIPT OF MOTION TO RECONSIDER MOTION FOR RELIEF FROM STAY FILED BY SOUTH CAROLINA COMMUNITY BANK (DOC. 34)
BEFORE HONORABLE DAVID R. DUNCAN
UNITED STATES CHIEF BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors:	JONATHAN L. DAVIS, ESQ. P.O. Box 746 Blythewood, South Carolina 29016
For South Carolina Community Bank:	Richardson Plowden & Robinson, P.A. By: S. NELSON WESTON, JR., ESQ. 1900 Barnwell Street Columbia, South Carolina 29201

TRANSCRIPTION SERVICE: **TRANSCRIPTS PLUS, INC.**
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THE COURT: The next matter on the calendar at 2 o'clock is the Gary Allen and Michele Anne Washington case, 14-5589, Slot Number 101 on the calendar for this afternoon.

If I could have appearances, beginning with the movant, please.

MR. DAVIS: Jonathan Davis for the Washingtons, Your Honor.

MR. WESTON: Nelson Weston on behalf of South Carolina Community Bank.

THE COURT: All right. Mr. Davis, you've asked that the Court reconsider the relief that it granted to South Carolina Community Bank. What's the basis for that?

MR. DAVIS: Your Honor, pursuant to Federal Rule of Civil Procedure 59(e) or the Federal Bankruptcy Rule 9023, I believe that we have new evidence to present to the Court.

THE COURT: What new evidence is there?

MR. DAVIS: The work that was commissioned to be done on the property, a portion of the work creating a retaining wall to prevent erosion, and protect the property as we finish, we believe that's increased the value of the property.

THE COURT: So you want to argue about valuation?

MR. DAVIS: We believe that the increased value of the property increases -- or provides equity to protect South Carolina Community Bank's interest.

THE COURT: And this -- this newly discovered

evidence was not available at the last hearing, or the hearing before that?

MR. DAVIS: Your Honor, the work has been completed since the hearing. And, therefore, the value has increased since that time. The work wasn't -- was still in process. They begun some of the work before the hearings and previous hearing.

THE COURT: And what evidence of the value do you have here today?

MR. DAVIS: I have Mr. Washington to attest to the completion of the work. He --

THE COURT: Well, he testified -- or tried to testify last time that if the work were completed, that the property would be worth more, right?

MR. DAVIS: Yes, Your Honor.

THE COURT: Okay. What -- what other evidence do you have?

MR. DAVIS: Now he's -- have the -- had the work completed, have an appraisal that Mr. Washington commissioned.

THE COURT: Is the appraiser present?

MR. DAVIS: The appraiser is out of Greenville, and is in Virginia today. But I believe that the only -- the only evidence before the Court as far as the value of the property has been Mr. Washington's opinion. South Carolina Community Bank agreed to accept his opinion as to valuation.

So I think that since the work has been done and -- and, therefore, his opinion of the value has increased. I think that that new evidence is properly before the Court.

THE COURT: Mr. Weston, you -- would you -- would you object to the receipt of an appraisal by the Court when the appraiser is not present for you to cross-examine?

MR. WESTON: Yes, sir, Your Honor, I would object.

Your Honor, just -- if I may -- may I respond? Or do you want me to hold off responding?

THE COURT: No, I just wanted to ask that one question.

MR. WESTON: We would not -- we would object to the evidence of any appraisal being brought forth today, Your Honor.

An appraisal could have been submitted at a prior hearing, and they could have made certain assumptions at that time if they so elected. They did not do that, and we believe this is evidence that should not be admitted.

THE COURT: All right. Mr. Davis, what else?

MR. DAVIS: Your Honor, I would argue that if the -- even if the appraisal were not allowed for the value of the actual appraiser's opinion, that Mr. Washington's opinion has inflated because of the completed work. And that's the only evidence before the Court was his opinion of the valuation of the property.

We also have --

THE COURT: Well, in -- in the last hearing, we didn't even really get to the issue of the value of the property.

MR. DAVIS: Well, value was set at the debtor's opinion --

THE COURT: At the first hearing.

MR. DAVIS: Yes. Sorry, Your Honor.

THE COURT: When Mr. Washington --

MR. DAVIS: On the 12th.

THE COURT: -- wasn't present.

MR. DAVIS: Correct. Well, that was set in accordance with debtor's schedules, which were Mr. Washington's opinion of the property.

THE COURT: All right.

MR. DAVIS: Which I believe has been changed by the completion of the work and, therefore, I would offer to the Court the new evidence.

THE COURT: Well, I mean he -- he's argued all along that the initial valuation in the schedules wasn't correct. He was quite upset, as I recall, that we were not going to have a full-blown hearing on the issue of valuation, is that right?

MR. DAVIS: Your Honor -- yes, Your Honor. But I believe that that --

THE COURT: And now he wants to have his hearing at

this point.

MR. DAVIS: Only to the extent that he offers what he believes the value, now that the work has been complete, Your Honor.

THE COURT: Well, and that's what he was trying to do earlier, right?

MR. DAVIS: But --

THE COURT: And -- and I -- I made the determination that that issue had already been resolved by the Court.

MR. DAVIS: Yes, Your Honor.

THE COURT: Okay. And so he's back now for a second time asking me to reconsider that decision that was made at the very first hearing when he wasn't present.

MR. DAVIS: Well, Your Honor, technically we did -- there was no motion made in the previous hearing to reconsider the previous equity.

THE COURT: Well, except that when he appeared in court, he -- he insisted that we revisit that issue.

MR. DAVIS: He desired that we revisit the issue. I just don't believe that the Court did revisit the issue at that time. I --

THE COURT: All right. My recollection is that he was not happy that the issue was not revisited at that point in time. And he expressed some dissatisfaction with the Court's ruling, and with his counsel's decision about how to pursue the

case.

And now he's back again wanting that same issue to be revisited.

MR. DAVIS: I agree with what the Court's saying, Your Honor, except that I believe that because there has been a change in circumstances, that there is new evidence at this time which is properly before the Court. But other than that, I agree with the Court's assessment.

THE COURT: Well, I'll -- what other issues will be revisited today.

MR. DAVIS: Mr. Washington had a full month's work -- of contractual work for the first time in February, since the filing of this case. So we have expenses incurred in February which were -- we didn't have -- the Court had mentioned that there was no evidence of the expenses to offset the projected income.

THE COURT: Well, he didn't present any evidence at that hearing.

MR. DAVIS: But prior to that hearing, the only expenses that he had were minimal expenses, which were incurred in keeping his operation prepared to do work. And in February, he actually performed the work for the first time and incurred full expenses, which we would proffer to the Court.

THE COURT: And how -- how much -- how much time do you believe it will consume to have Mr. Washington's testimony?

Can you give me an estimate of that, for direct examination of Mr. Washington?

MR. DAVIS: Fairly brief, Your Honor. Ten to 15 minutes, or so.

THE COURT: How long?

MR. DAVIS: Ten to 15 minutes, I don't --

THE COURT: All right. So you think 15 minutes?

MR. DAVIS: Yes, Your Honor.

THE COURT: All right. Mr. Weston, anything before we begin?

MR. WESTON: Yes, sir. Of course, subject to the Court's decision in this, Your Honor, the first thing with regards to the valuation that Mr. Davis keeps bringing up. The valuation was established in the schedules. They've never amended their schedules, they've never done anything. I mean I think that -- and we agreed with those -- we agreed with the schedules and the values set forth in the schedules. We never agreed to Mr. Washington's opinion. We -- we agreed to the value as established by the schedules.

With regards to the proposed testimony, we would object to that also, Your Honor, with regards to expenses.

This is not the first time Mr. Washington has been up here. As a matter of fact, I can count on my hands six times that I've been up here with Mr. Washington over the last couple years. Mr. Washington has testified in this court regarding

the expenses of CPI and Mr. Washington's own expenses throughout several of those hearings in the past.

I'm not sure what evidence is going to be presented today based on CPI's accounting. He's still -- and I've got a copy of what he's proposing to present to the Court. All it is is a ledger sheet. It's not an -- it's not an income statement, a cash basis statement or anything for Mr. Washington and the property, nor is it for CPI. It's just a one-month income and expense statement, and that's all it is.

That doesn't tell us anything today, tomorrow, or in the past. Mr. Washington had the opportunity at the previous hearing to submit evidence as to the accounting and the ability to provide adequate protection. That hearing has been held. Presenting evidence today after the fact on one month's numbers, I don't think, is going to be sufficient.

That being said, I would object to this testimony coming in and look forward to the Court's decision.

THE COURT: All right. Mr. Davis, I'm going to let you call your client. And he can -- he can provide us with the testimony that he thinks is relevant here today. By my allowing the testimony here today, that does not, in any way, indicate that I think that it meets any of the requirements for after discovered evidence, for newly discovered evidence, for a change in circumstances, or for anything else. It simply means that I want Mr. Washington to feel as though he's had his

opportunity to fully and fairly present his case, and I want to be clear that I want you -- I want this to be actual direct examination where you ask him a question, and he provides an answer.

I'm not looking for long narratives about the business, or anything else. I think -- I think I'm extending to you the benefit of the doubt so that you can proceed here today.

But I don't want to see that abused, all right? So you want to call your client, Mr. Washington?

MR. DAVIS: Yes, sir.

THE COURT: All right. Mr. Washington, if you'd come forward to be sworn, please.

COURTROOM DEPUTY: State your full name.

MR. WASHINGTON: Gary Allen Washington.

GARY WASHINGTON, DEBTOR'S WITNESS, SWORN

COURTROOM DEPUTY: Please take a seat.

THE COURT: All right, Mr. Davis.

DIRECT EXAMINATION

BY MR. DAVIS:

Q Mr. Washington, we are here following the February 19th hearing, and could you please explain to the Court the changes that have occurred in the property since that time?

A Yes. 18 -- 15 and 18 (sic) Gervais are properties my wife and I own. And the property value for 1811 has increased to

$112,000. And the property for Gervais Professional Suites, 1815, is $445,000.

The things that we did to increase the value of the property was to have a retaining wall installed in the facility to stop the erosion of the property, which has been inspected and completed.

And we had one of our main offices in the facility rewired for Internet and for phone lines.

And also we had piping work done.

And we also just recently extended three of the offices in 1815, which gives more capacity for lease office space.

Q And when was --

A And --

Q When was that done? I'm sorry.

A Um, it was just finished up on the 11th of March -- the 10th of March it was finished up, an appraisal was finished up on the 12th.

Q And you believe that there is -- do you believe that there is equity now to protect South Carolina Community Bank's interest?

A Yes, I do believe there's equity in the property, the total value of $557,000 versus the $306,000 that was previously discussed, which was a tax assessed value.

MR. WESTON: Your Honor, just -- I -- I didn't want

to interrupt, but I do object to all the testimony submitted by Mr. Washington as to the value as it's not timely.

THE COURT: The basis of your objection is?

MR. WESTON: This could have been brought up at a previous hearing, Your Honor. And this is not new evidence.

The appraisal was completed March -- these -- this work was going on at the time of the last hearing. Whether or not it was completed or not, I don't think is relevant. He could have gotten it reappraised prior to that -- that time period. He could have established an increased value based on that time period. And this being -- in my opinion, it's not new evidence under Rule 59(e) --

THE COURT: All right.

MR. WESTON: -- that should be submitted.

THE COURT: Thank you. All right. Mr. Davis, go ahead.

MR. DAVIS: (Indiscernible - not at microphone) Your Honor?

THE COURT: I -- what is that?

MR. DAVIS: I'd introduce this --

THE COURT: The appraisal?

MR. DAVIS: I'd introduce this as --

THE COURT: I'm not -- I'm not going to take an appraisal into evidence when the appraiser's not here in the courtroom, and -- and Mr. Weston doesn't have an opportunity to

cross examiner the appraiser, and -- that's just the rankest of hearsay.

BY MR. DAVIS:

Q What's the document you have in front of you, Mr. Washington?

A It's the income statement and expenses for the month of February, 2015.

Q And --

A It gives the amount of the income, which is $19,000 it has received from Shaw Air Force Base for moving services we provide. And then the expenses. And the expenses subtracted from the income is $5,238, and I certified that letter. This is the first time that the work of the contract has been provided to us to execute, and we have executed the work. And for the month of March, we had quite a bit of work. April, June, July, August, as well.

Q When you say "first time" -- I'm sorry -- you say it was the first time. You -- for what time period?

A The first time since quite a -- quite a while, probably seven months. We've had one or 2,000, or 3,000, but it's been very difficult for the most part. This is the actual contract in an action where they put the finances to it, and they gave us the things called task orders, which are orders from Transportation Management Office to say these are the families that you move, these are the dates, and this is the income

you're going to receive from that, less the expenses which I have here. The wages and salaries to include my wife and myself, fuel, materials, which are boxes, tapes, equipment, employment taxes, insurance, truck payment, overhead, and office and utilities, expenses.

Q And given your -- given the balance of your income after the expenses, do you believe that you would be able to provide adequate protection payments to South Carolina Community Bank for the property at 1811/1815 Gervais?

A I do, yes.

MR. DAVIS: Nothing further.

MR. WESTON: Again, Your Honor, I would object to the testimony being presented today as it's, again, not relevant. It's not new evidence. This is testimony as to the CPI's income and expenses for the month of February, 2015 only. I don't think that has a bearing on the history of this case, nor do I think it has a bearing on what was in place last month at the time of the hearing. I mean based on Mr. Washington's argument, we can keep submitting new things every month, and presenting to this Court a change that -- to change the situation. But as of the time of the 341 with -- 3 -- excuse me -- as of the time the 362 was filed, Your Honor, that was the date of the -- the day we were looking at, they had all the opportunity, Mr. Washington had all the opportunity to present evidence, providing adequate protection on two -- in 2000 -- in

-- in February of last -- which I believe was February 26th. And, again, we would just object to this testimony as not being relevant and not timely.

THE COURT: Okay. Without waiving your objection, do you have any cross-examination of the testimony?

(Pause)

MR. WESTON: Your Honor, this is the first time I've seen some of these documents, so just let me --

THE COURT: I understand.

MR. WESTON: Let me just --

(Pause)

THE COURT: Now the appraisal did not come into evidence.

MR. WESTON: I know that, I'm looking for some information in it.

(Pause)

MR. WESTON: I don't have anything, Your Honor.

THE COURT: All right. Mr. Washington, you may step down.

Is this --

COURTROOM DEPUTY: Exhibit Number --

THE COURT: -- Exhibit Number 3 -- is -- and that's been admitted into evidence, and this is just a copy for me. It's been marked.

COURTROOM DEPUTY: Yes, sir.

THE COURT: And he testified from this.

MR. DAVIS: Correct, Your Honor.

THE COURT: Okay. All right. Anything else, Mr. Davis?

MR. DAVIS: Well, just in closing, Your Honor, if you -- that's -- just reiterate to the Court, Your Honor, Mr. Washington testified that he believes he has $567,000 worth of property now with work that was done to increase the valuation of the property. The claim of South Carolina Community Bank is $369,000, which would allow substantial equity, which the Court's previous ruling under 362(d)(1) and (2), I believe, the amount of equity in itself would allow adequate protection.

Mr. Washington's plan has been filed, and currently proposes to pay South Carolina Community Bank $2,500 per month at 4.5 percent interest with a balloon payment due at the end of the plan as an adequate -- as an effort to extend adequate protection payments.

And under 362(d)(2), the existence of equity itself would counter that reason for -- sorry -- counter that argument for relief from the stay. So we believe that with the evidence of the increased value of the building that both grounds for relief from the stay should be denied, and ask the Court to amend its prior judgment.

THE COURT: Well, you would agree that the judgment should be amended only if you are successful in having me

reconsider both issues: (d)(1), adequate protection; and (d)(2), lack of equity and no effective -- no effective reorganization.

Because if either of those exist, then the stay should be lifted.

MR. DAVIS: Well, I believe Your Honor has found in the past that the existence of a substantial amount of equity in itself constitutes adequate protection. So I believe that the existence of what we believe to be nearly $200,000 in equity would, therefore, counter both of those prongs.

THE COURT: Okay. And what I've been presented with today is that Mr. Washington's opinion is now that the property is worth $557,000.

MR. DAVIS: Yes, Your Honor.

THE COURT: And the other evidence that I have is that at the time the bankruptcy case was filed, he said that the property was worth $306,000.

MR. DAVIS: Correct, Your Honor.

THE COURT: And at the time South Carolina Community Bank filed its motion for relief from stay, it relied on the scheduled value of the property as the value.

MR. DAVIS: The initial motion for relief from stay set forth their opinion of the value at 450,000.

But then in the second relief -- motion for relief from stay, they --

THE COURT: The one we're here on today.

MR. DAVIS: Correct, Your Honor.

THE COURT: They relied --

MR. DAVIS: They relied on the schedule --

THE COURT: -- on 306,000.

MR. DAVIS: Scheduled value, yes.

THE COURT: And Mr. Washington never filed any certification indicating a higher value. He's tried to testify now twice that the value is greater than what he indicated in the petition.

MR. DAVIS: I believe that the current opinion of Mr. Washington being that the building has increased in value because of the work done since the filing of the petition, I believe the initial valuation at a time of filing would still be appropriate. Work's been done since then, I think the --

THE COURT: And he indicates that there has been some piping, some rewiring, and a retaining wall.

MR. DAVIS: Yes, Your Honor. There was erosion that was threatening to undermine the building.

THE COURT: And -- and --

MR. DAVIS: There is still more ongoing work.

THE COURT: And I'm to surmise from that that -- that supports an increase in value of over $250,000, nearly a doubling in the value of the property. And all I have is the owner of the building's opinion.

MR. DAVIS: Well, Your Honor --

THE COURT: And I know that the basis of that opinion is an appraisal, but the appraisal is not before the Court because it's hearsay and I don't have the appraiser here to tell me anything about the basis for that opinion of value.

MR. DAVIS: Your Honor, I would submit that the only evidence previously before the Court was, as Mr. Weston said, it was their agreement with the scheduled value. That was also based on Mr. Washington's opinion.

South Carolina Community Bank has not offered any evidence of their own --

THE COURT: But they don't have to because 362 -- I think it is 362(g) says that the burden of proof on equity is on the movant. And they can just adopt the debtor's valuation. And then they -- for that reason, the only evidence that I have is the debtor's value.

MR. DAVIS: Correct, Your Honor.

THE COURT: Okay. So the only --

MR. DAVIS: But --

THE COURT: -- evidence I have is what they relied on, which is the 306,000. And I think they were claiming at the time they were owed 400 and --

MR. DAVIS: 369,000.

THE COURT: 369,000.

MR. DAVIS: Yes, Your Honor.

THE COURT: And I think --

MR. WESTON: Right now, Your Honor, at this point, we're sticking with that number. But if we -- by chance, something happened, we would increase -- there's some accrued interest that has been -- I'll say an accounting has taken off about 150,000. But we're -- we're not seeking that today. If I had to refile and do that, we would turn around and seek that -- those additional monies.

THE COURT: And -- okay. So on the issue of equity, what is it that convinces me that I should now give weight to Mr. Washington's opinion that this property has increased in value by $250,000 since the time the bankruptcy was filed? Given that what's been done is there's a retaining wall that's been built, and there's been some rewiring of an office, and some piping work, how does that increase the value by $250,000?

MR. DAVIS: I don't --

THE COURT: The reality is he just wants me to go back and start from scratch on this valuation issue. This isn't really newly discovered evidence or anything else. He continues to disagree with the Court's finding that the property was worth $306,000, which it found based on his own opinion. Because there's nothing in the record here today that would indicate to me an increase in value of $250,000.

MR. DAVIS: Your Honor, I -- I agree that the increase seems extravagant. I do believe that Mr. Washington

may feel his initial assessment of the -- of valuation was low. However, those were issues that I didn't think were properly before the Court today.

As he testified in the previous hearing, the amount of work that he was having done to the property cost somewhere in the neighborhood of $45,000 just for the work itself. If there were a $306,000 value, and a $360,000 debt owed, then $45,000 worth of work may very well have increased it by enough to grant equity at that point.

However, since Mr. Washington's current opinion of the valuation is based on a commercial appraisal that he had done, the evidence that I have to present to the Court today is only his current impression of value. So --

THE COURT: But I don't know how to weigh that impact on Mr. Washington of having a commercial appraisal. Because that commercial appraisal is, for me, just hearsay because I don't have an appraiser --

MR. DAVIS: I understand, Your Honor.

THE COURT: -- here to tell me about the value of the property.

MR. DAVIS: Sure.

THE COURT: The only other thing that's offered here today is this information about the income and expenses of CPI. And I'm assuming that that's offered because of a finding that I made in the order that the debtors currently had $375 in an

account attributable to the property, and that the monthly operating reports don't reflect any accumulation of funds to warrant the Court finding that adequate protection payments would actually be paid if they were offered here.

And then there was testimony at the last hearing about the contracts that CPI had, but no actual information about the income that was coming from those contracts. It was just a gross amount. The contracts were in place so that if CPI was called on to perform under these agreements to provide work, then that would be the total of the contract. But there was nothing about --

MR. DAVIS: Right.

THE COURT: -- what the expenses would be made, how much money would flow to Mr. and Ms. Washington as a result of that.

And after hearing from Mr. Washington today, over Mr. Weston's objection, I know that in one month, there were -- there was $19,000 received on one of the contracts. That according to Mr. Washington's accounting -- and I don't have any documentation of this, I just have this document he created, so there's no support for this. But the total expenses were a little less than $14,000. So in one month, there was on paper for CPI a profit of $5,238.

I don't know anything about how much of that is going to flow to the Washingtons, what might be taxable, what might

be anything else. I don't know anything about when the next good month of income might come.

So how does that influence my earlier determination that I had no evidence that I could rely on about Mr. and Ms. Washington's ability to pay these payments out into the future if -- assuming this is good evidence, which I'm not prepared to assume, but just having one month's numbers?

MR. DAVIS: Your Honor, as Mr. Washington testified, he had not had the contractual work for a period of approximately seven months, up until this point.

THE COURT: Right.

MR. DAVIS: Although he did just testify that they've submitted work orders -- request orders for work for June, and the -- the information that you have in front of you, as noted, is only from the Shaw Air Force Base contract. He has several other contracts that he had testified previously, obviously those will have expenses, as well.

THE COURT: Right. And I don't have any information --

MR. DAVIS: But --

THE COURT: -- still about any of those contracts.

MR. DAVIS: Those contracts, he still hasn't worked on yet. We're attempting to provide the Court with the actual full month's work that was completed in February. It's unfortunate timing as far as being able to prevent -- provide a

stream of months. But Mr. Washington, you know, does believe that he will be able to -- to make payments. He and his wife are the owners of CPI.

THE COURT: He didn't testify to that from the stand. He just told me that he had this one month in which he made, on paper, $5,000. I still don't have any information about any of the other contracts, what the expenses are going to be, what the likelihood is in any particular month that there's going to be income.

And after expenses, I have no information about what's going to flow to Mr. and Ms. Washington, and how they're going to be able to use that money to pay the creditor that's involved here.

Still the only thing that I have that's evidence before the Court is that there was $375 in the bank. And that going back for a period of -- is it almost a year that there's been no payments made on this loan?

MR. DAVIS: Yes, Your Honor, maybe.

THE COURT: And -- and if you couldn't make the $2,600 a month payment over that course of a year, so the money, I guess, was going someplace else, and all there is is $375 in the bank on the date of the hearing, I still don't see anything that suggests that I ought to reconsider my order.

MR. DAVIS: If I may call Mr. Washington again, I could provide the -- I mean have him testify --

THE COURT: We can't -- we can't serially call Mr. Washington --

MR. DAVIS: I understand.

THE COURT: -- every time I ask a question.

MR. DAVIS: I'm sorry. Your Honor --

THE COURT: Mr. Weston would have every right in the world to complain about that kind of procedure. And that's exactly what he's complaining about now when he says, you know, this could all have been brought up at the last hearing. It could have all been raised earlier in the case. None of this is new. It's disguised as new because it's now being brought up, but it's the first time he's seen any of it.

MR. DAVIS: Your Honor, it's petitioners' belief or counsel's belief, perhaps, that evidence as to what the valuation of the property might be after what was done was speculative and not properly before the Court as fact until work was completed.

Therefore, the earlier valuation was based on the property prior to the work being completed.

If I might offer perhaps --

THE COURT: Although you will acknowledge at that earlier hearing that Mr. Washington's testimony was, "Oh, I have all this work being done on the property, and it is going to increase the value. It is going to be worth more."

MR. DAVIS: Yes, sir. We believe that it would

increase the value of the property, but that it had not done so yet as work had not been completed. And that the Court would only want to hear the present value of the property, and not some speculation as to what Mr. Washington thought it might be worth at a later date.

And so now the work has been done, we thought that the valuation would properly be before the Court.

As to the weight that the Court might allow to the valuation, South Carolina Community Bank's initial assertion was that the value was -- that the value of the property was 450,000.

If the assertion of Mr. Washington now is that the -- professional that the value was increased to approximately 560,000, that might possibly be used to look at to establish a range that the work -- the value that the work increased on the property. Mr. Washington and Mrs. Washington are the sole owners of Carolina Procurement Institute and, therefore, the -- it's anticipated that they would use the profits from their work in those contracts to finance their Chapter 11 case.

Mr. Washington did testify that he does believe he's be able to provide adequate protection payments into the future now that his work is going on, and he testified that he had work orders lined up through June so far. The way that the Government issues him the work is that they offer him the lump sum contract, which he already testified to, and then they send

him a work order. But they don't -- as the Court's pointed out, they don't guarantee, "Oh, you're going to have this much in this month or this much in this month."

THE COURT: Right.

MR. DAVIS: So -- and it has been a struggle for Mr. Washington to try to keep -- keep the payments up in the past, which is why he's here again.

THE COURT: And the reason that I know that it's been a struggle is because he hasn't been able to make these payments. He hasn't had the money to make the payments.

MR. DAVIS: But he did testify in the previous hearing, in addition to the prior contracts that he had, he had several new contracts. They haven't begun issuing the work orders yet, but they're in place. And solely with the amount of income that he has from his first month with one contract, I believe there's enough income to be able to make his payments in his Chapter 11 plan.

So when the new contracts actually start paying out money, and he does incur those expenses, the increase in income should be only more than what he offers in his February statement. It just -- as far as that goes, it's just the bad timing for Mr. Washington that this was the first month that he reentered the --

THE COURT: And I realize that you are counsel in this case, and it's your first involvement in the case, but I

know that you've had conversations with Mr. Washington, and it would not surprise you that going back to 2009, this is not the first time that I've had a hearing in which I've heard that there are contracts to come in the future, and that what's occurred in the past has just been a bad spell.

And so for me to now hear that again is not anything new to me.

MR. DAVIS: Okay.

THE COURT: Anything else?

MR. DAVIS: No, Your Honor.

THE COURT: Okay. Mr. Weston, anything from you?

MR. WESTON: Your Honor, I would just restate my previous objections to the Court on the testimony presented today. And my objection that, again, it's not -- it's not new evidence, all this could have been raised at a prior time.

And just to mention just as you stated with regards to the new contracts, we talked -- we discussed -- well, that was -- there was testimony in the prior hearing there were no new contracts. At the time, there were no contracts. Still don't have any evidence of any contracts to this day. There has not been one piece of paper put forth as evidence in this case that there is actually a contract with CPI and a third party. There are just statements from Mr. Washington.

So I don't have anything else, Your Honor.

Again, we would just oppose the motion to reconsider.

THE COURT: All right. Thank you. I'll -- I'll issue an order as quickly as I can. The matter's taken under advisement.

MR. WESTON: Thank you, Your Honor.

(Whereupon, at 3:05 p.m., the hearing was adjourned.)

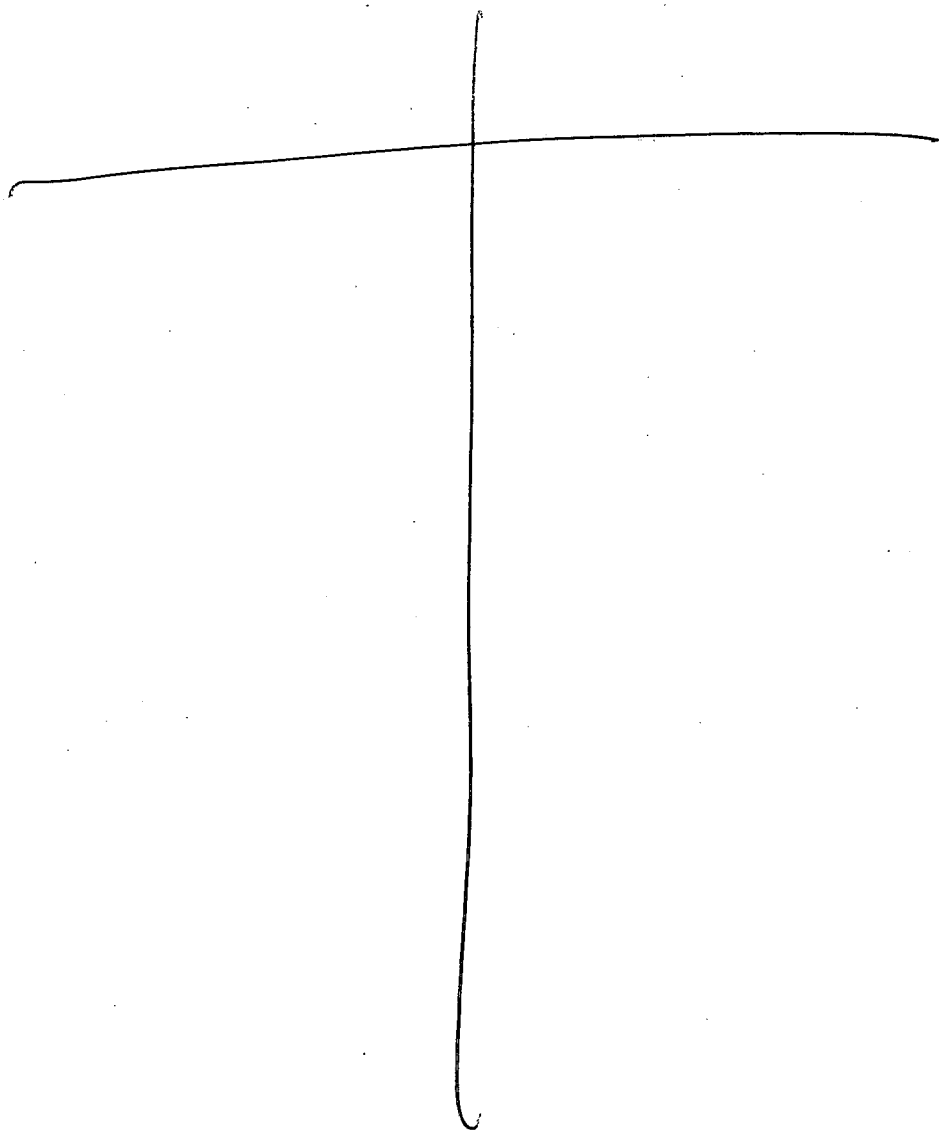
CERTIFICATE OF TRANSCRIBER

I, KAREN HARTMANN, a certified Electronic Court Transcriber, certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



Karen Hartmann, AAERT CET**D0475 Date: December 18, 2015
TRANSCRIPTS PLUS, INC.

Attach



From: "Robert B. Cooper" <[redacted]>
Date: Mar 2, 2011 1:37 PM
Subject: FW: Gore not Markets Washington
To: "Dave Washington" <[redacted]>
Cc: "patricia" <[redacted]>

Dude. The judge is asking if I care about trying to appease the approval without Gore being present to testify as to "influence M" or in the April 6, 2011 transcript also had harsh, and at page 11 footnote and 14 days of the transcript. Please confirm receipt of this so I will know you received what was requested.

Bob

From: [redacted]
Date: [redacted]
To: [redacted]
Subject: Gore not Markets Washington

Good afternoon Mr. Cooper

Please find attached this transcript for the hearing in the above-referenced matter.

As you know, we are [illegible] you have not noted that [illegible]

Thank you.

Karen

Karen Kavanaugh, CET
Transcripts Plus, Inc.

AGENT CET **D067

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[redacted]

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IN RE:	)	Case No. 14-05589-dd
GARY ALLEN AND MICHELE ANNE WASHINGTON,	)	Chapter 11
Debtors.	)	1100 Laurel Street
	)	Columbia, South Carolina
	)	January 7, 2015
	)	11:36 AM

SECTION 362 MOTION OF SOUTH CAROLINA COMMUNITY BANK FILED DECEMBER 10, 2014
BEFORE HONORABLE DAVID R. DUNCAN
CHIEF UNITED STATES BANKRUPTCY JUDGE

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APPEARANCES:

For the Debtors:	Davis Law Office, LLC BY: JONATHAN L. DAVIS, ESQ. PO Box 746 Blythewood, SC 29016
For South Carolina Community Bank:	Richardson Plowden & Robinson PA BY: CHARLES J. WEBB, ESQ. 1900 Barnwell Street Columbia, SC 29201

THE COURT: This is 14-5589, a 362 motion of South Carolina Community Bank. I understand the parties have a settlement to announce.

MR. WEBB: That's correct, Your Honor. Based on some information that has been provided me today by Mr. Washington's counsel, we've agreed to accept -- and I'll be happy to go through the terms with Your Honor, or we can --

THE COURT: I'd like to hear them.

MR. WEBB: Okay. We're going to be willing to accept $2,600 starting March 15th.

THE COURT: What was the amount?

MR. WEBB: $2,600.

THE COURT: Um-hum.

MR. WEBB: And then starting July 15th of 2015, it'll be $3,100.

Also, Mr. Washington is willing to sign a confession of judgment for the full amount that is owed. I don't have that exact figure right now. It's in the neighborhood of $340,000. And then the parties are going to work together to try and get one of the -- there's two buildings, Your Honor. And the parties are going to work together to get one of the two buildings sold, if at all possible.

THE COURT: All right. And if the payments are not made, what happens?

MR. WEBB: We would try and foreclose, at that point.

And then we would have the confession of judgment, as well.

THE COURT: So the agreement is that if the payments aren't made, that you would be entitled to relief from stay.

MR. WEBB: That's --

THE COURT: Is that right?

MR. WEBB: Correct.

MR. DAVIS: Correct, Your Honor.

UNIDENTIFIED SPEAKER: Yes, sir.

THE COURT: And so the payments are $2,600 a month beginning March 15th, due the 15th of each month.

MR. WEBB: That's correct.

THE COURT: And are late when? After the 15th, or is there a grace period?

MR. WEBB: There's a 20-day grace period.

MR. DAVIS: 10.

MR. WEBB: 10-day grace period.

THE COURT: 10 days?

UNIDENTIFIED SPEAKER: He's telling me 30.

MR. WEBB: This is Walter Taylor with the bank, Your Honor.

THE COURT: Yeah. Mr. Taylor, come up and have a chat with your lawyer. I just want to make sure we've got all the settlement documented.

MR. WEBB: All right, 20 days, Your Honor, grace period.

THE COURT: 20 days. All right. And then so you'll have March, April, May, and June, paying that, and then in July, those payments step up to $3,100.

MR. WEBB: That's correct, Your Honor.

THE COURT: Continuing that if they aren't made, that -- payment -- you'd be entitled to relief from stay after 20 days. And Mr. Washington is going to sign a confession of judgment for the whole amount due.

Now, what's the impact on that confession of judgment if Mr. Washington's Chapter 11 goes forward and there's some additional plan? How does that impact that confession of judgment? He may get a discharge --

MR. WEBB: Right.

THE COURT: -- of some debts, depending on what the plan says, ultimately. And of course, you'll have a vote on that. But that confession of judgment may be valuable for some purposes but not others. And I want to make sure that we're all clear on that.

MR. WEBB: Understood.

THE COURT: I don't know where this case is going to go. But --

Now, with respect to selling the one building, when does that effort begin?

MR. WEBB: I think we're going to try and do that as soon as possible, Your Honor. There is a wrinkle in there

that one of the buildings is a historical building, so that's why we're kind of looking to cooperation from both parties, because I think there has to be some hardship shown to Mr. Washington in order for him to potentially sell or relocate the building and get some approval from the Historical Society to do that. So there may be -- it's not as easy as just putting it up on the market and finding a buyer.

THE COURT: Right.

MR. WEBB: But both parties have agreed to try and get that done.

THE COURT: All right.

MR. DAVIS: Just for clarification, Your Honor, to sell the building, we're discussing the building itself and not the land parcel.

MR. WEBB: Correct.

MR. DAVIS: We need to sell them or just relocate the building, which is going to create extra parking and increase the value of the first building, we believe. The building's kind of in the way. So it's not a -- not that he's trying to sell one building of the two, sitting where it is; it's that he's trying to sell the building for purposes of moving it.

MR. WEBB: Correct.

THE COURT: So he's trying to sell just the improvement, but not the underlying real estate.

MR. WEBB: Yes, Your Honor.

MR. DAVIS: Exactly.

THE COURT: And these are the properties down on Gervais Street?

MR. DAVIS: Yes, Your Honor.

THE COURT: Okay.

MR. DAVIS: I believe it's 1811 is the one that would be sold. Is that right?

MR. WEBB: Right.

MR. DAVIS: 1811 Gervais Street would be the one that would be sold. 1815 would remain.

THE COURT: And otherwise, the case, then, is just going to go forward as a Chapter 11, thinking that there may be a proposal of a disclosure statement and a plan, at some point?

MR. DAVIS: Yes, Your Honor.

THE COURT: All right. And these -- the payments -- the ongoing monthly payments, how are they impacted if one of the buildings is sold? Are they reduced, at that point?

MR. WEBB: I don't know that we --

THE COURT: You didn't get to that? Okay.

MR. WEBB: I think -- I mean, the bank would certainly consider reducing it. I don't --

THE COURT: I guess my ultimate question is, I'm presuming from what you're telling me that these payments will continue on --

MR. WEBB: Yes, sir.

THE COURT: -- in the future, at least until there is a confirmed plan. A confirmed plan might have some different terms in it. And the parties, in good faith, I suppose, would renegotiate this deal if some funds come in from the sale of the building. And I'm presuming that the bank is entitled to the proceeds -- the net proceeds of sale. Is that right?

MR. DAVIS: I don't think I -- Jonathan Davis for the debtor. My understanding is that the bank would -- in addition to the Court's approval, we would need the bank's approval of any funds that -- for some agreed sale.

THE COURT: Right.

MR. DAVIS: And then those proceeds --

THE COURT: How that would be distributed.

MR. DAVIS: And then those proceeds from the sale, would go to the bank. And then at that point, I imagine, we could renegotiate the $3,100 payment, if the total balance --

MR. WEBB: That's a fair statement, Your Honor.

THE COURT: Okay. All right. Who's going to reduce this agreement to writing?

MR. WEBB: I'd be happy to do it.

THE COURT: And since this is a settlement of a motion for relief from stay by providing, essentially, adequate protection, notice of the settlement's going to have to go out to all creditors --

MR. WEBB: Understood.

THE COURT: -- under Rule 4001(d). So you'll have to send out the notice of the settlement. If there is an objection to the settlement, we'll have a further hearing on that. But if not, at that point, you would then submit the order that approves the settlement.

So you've got sort of a several-step process that you need to go through here, but the matter on the calendar is settled, subject to a 4001(d) notice. If there's an objection to that notice, there will be further hearing. Otherwise, after the time set forth for objections in the notice passes, I'll look, Mr. Webb, to you for an order. All right?

MR. WEBB: Thank you, Your Honor.

THE COURT: Anything else that I can do for the parties here today?

MR. WEBB: Not from me, Your Honor.

THE COURT: All right. Anybody else? Thank you very much.

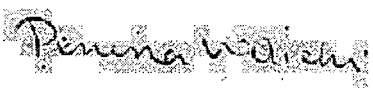
MR. WEBB: Thank you.

THE COURT: We are adjourned.

(Whereupon, at 11:44 AM, the hearing was adjourned.)

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



/s/ Penina Wolicki Date: February 18, 2015

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I N D E X

R U L I N G S

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$3,100 (3)
3:15;5:3;8:17
$340,000 (1)
3:19

A

accept (2)
3:6,9
addition (1)
8:10
additional (1)
5:11
adequate (1)
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B

balance (1)
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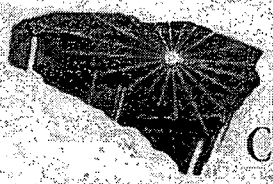
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South Carolina
Community Bank
Member FDIC

Corporate Office
1545 Sumter Street
Columbia, South Carolina

Mailing Address
Post Office Box 425
Columbia, South Carolina 29202
Telephone: 803-733-8100
Facsimile: 803-733-8135

Dear South Carolina Community Bank Customer:

Our independent public accounting firm, Elliott Davis, LLC, is conducting an annual audit of our financial statements. In accordance with standard auditing procedures, they randomly select customer accounts to confirm various account details. Your account was selected, and accordingly, an account confirmation form is enclosed.

Thank you in advance for promptly responding to their request for information. We value your relationship with our bank and ask you to pardon any inconvenience that this may cause. If you have any questions, or if you wish to verify the authenticity of this communication, please contact your branch office. Thank you for helping us maintain strong audit controls at South Carolina Community Bank.

Sincerely,

Tom Felder
President / Chief Executive Officer

SOUTH CAROLINA COMMUNITY BANK

AUDIT DATE	TYPE OF ACCOUNT	ACCOUNT NO.	BALANCE
12/26/14	LOAN	125096	340,455.55

DEAR CUSTOMER, YOUR LOAN ACCOUNT WITH SOUTH CAROLINA COMMUNITY BANK HAS BEEN SELECTED FOR VERIFICATION. IF YOUR RECORDS AGREE WITH THE BANK'S, PLEASE SIGN AND RETURN IN THE ENCLOSED ENVELOPE BY JANUARY 23, 2015. IF NOT, PLEASE DESCRIBE ANY DIFFERENCES ON THE REVERSE SIDE AND RETURN TO ELLIOTT DAVIS, LLC IN THE ENCLOSED ENVELOPE.

THANK YOU.

CAROLINA PROCUREMENT INSTITUTE INC
1815 GERVAIS STREET
COLUMBIA SC 29201

Bank fights to stay afloat

- BY NOELLE PHILLIPS nophillips@thestate.com
- Aug 20, 2011
- (0)

COLUMBIA -- South Carolina Community Bank, the state's only African-American-controlled bank, is in trouble.

In the past two years, the problems have piled up: intense scrutiny from federal bank regulators, a cruel recession, an embezzlement by a high-ranking executive and infighting among its shareholders.

For David Swinton, chairman of the Columbia-based bank's board of directors, the pressure is on for the bank to succeed. Not only does Swinton have a personal investment in the bank, but Benedict College, where he is president, is the largest shareholder.

Swinton and the bank's other directors think they have found an answer in Tony Grant, a former Bank of America executive who has agreed to serve as chief executive officer, pending approval from the Federal Deposit Insurance Corp., a federal bank regulator.

At last month's shareholders meeting, Swinton did his best to assure those present that the bank could succeed. But he also warned that it would not be easy.

"I'm telling you it's not a slam dunk we're going to survive in the future," he said. "We have a lot of work to do."

In April 2010, the FDIC issued a consent order, detailing how the bank must handle its daily operations to stay in business. So far, the bank has managed to placate the FDIC, but banking experts say the bank can only keep the regulators satisfied for so long without finding new investors.

"For the moment, they're going to give the bank time to find a buyer," said Tony Plath, a banking and finance professor at the University of North Carolina at Charlotte. "At a certain point, you've got to conclude raising capital is unlikely."

The bank needs a savior with deep pockets. Between Dec. 31 and June 30, the community bank's capital declined by 12 percent, to $4.3 million, according to its second quarter financial report.

Over the past two years, its assets have dropped as more of its customers default on loans. And it doesn't have the money to make the big loans that bring the big returns.

That's where Grant comes in.

Cloudy outlook

At Bank of America, Grant worked with some of the biggest names in banking in the Southeast, including Hootie Johnson and Hugh McColl, two men who turned Bank of America into an industry powerhouse.

South Carolina Community Bank's board of directors hopes Grant's extensive contacts and fresh perspective will draw new investors.

Grant said he will not hesitate to ask those men for advice. He also said he plans to call on "high-worth individuals" he knows across the country and woo them as investors in the bank.

"I'm going to go through that Rolodex to find names I'm going to go see," he said.

At the same time, Grant knows South Carolina Community Bank has more to overcome than a lack of cash.

"At the end of the day, there are a lot of situations that plague this institution," he said. "There are clouds that are following us."

One cloud might be the infighting that erupted among shareholders after a failed joint real estate investment. To make the dispute worse, the shareholders had borrowed money from the bank, which foreclosed on them once the deal went under.

The practice of a bank lending money to its shareholders and their business interests is a bad idea, said Bert Ely, a Washington, D.C.-based bank consultant.

"That's a real no-no," Ely said.

It's not illegal for board members and bank executives to borrow from the bank, but more transparency is needed in those related-party transactions, said Marlon Kimpson, a Charleston securities attorney who has represented his parents' interest in the bank.

At the shareholders meeting, Kimpson questioned Swinton about the board's leadership and the bank's direction. He had submitted a five-page corporate governance agreement for the board to adopt, but it wasn't considered at the shareholders meeting.

That proposed agreement asked that the board detail all of the related-party transactions in its annual report to shareholders. Without such a report, "it looks like people are using this as their personal piggy banks," Kimpson said.

The dispute among shareholders has resulted in two lawsuits filed at the Richland County Courthouse. At a previous shareholders meeting, a group of men unsuccessfully tried to unseat the board of directors.

Meanwhile, the bank's current CEO, ClenteFlemming, is having financial problems of his own. He and Charles Gary, a Columbia real estate developer who is the board's vice chairman, are business partners outside of the bank and have defaulted on a $1 million loan issued by another bank, according to a courthouse foreclosure filing. Banking experts say the FDIC frowns on bank executives with personal financial issues.

"You're expected to live your life in an above-board fashion," said Plath, the banking professor.

Already, Torlando Childress, South Carolina Community Bank's former chief financial officer, pleaded guilty in July to stealing $377,000 from the bank. The bank's new CFO is Steve Herbert, a former executive at NetBank.

A proud past

Despite the issues, Grant is willing to step into the fray. He said he believes in the bank's mission of serving the black community.

"It's a process, not an event," he said. "It's not going to happen overnight. I do know the clock is ticking."

Even the bank's critics have faith in Grant's ability.

"I'm very optimistic that he can be a catalyst for a new movement," Kimpson said.

South Carolina Community Bank was born in 1999 when the old Victory State Bank failed.

Victory State Bank opened in 1921 to provide loans and other banking services to the state's black residents. It was a time when white-controlled banks did not offer loans to African-Americans. But when those larger banks began luring black customers through their doors, Victory began to struggle.

As Victory's failure became imminent, Swinton and Gary scurried across the state to find investors who believed in the mission of a bank controlled by black investors. They organized 50 investors, including Benedict College, and raised $3 million. At the time, investors paid $1 per share, said Edward Brown, a Charleston attorney who is an original shareholder.

When the FDIC seized Victory, it deemed the bank "critically undercapitalized" and said the bank's financial problems came from "poor management, excessive insider compensation, operating losses and a burdensome volume of problem assets."

When Victory closed on March 26, 1999, Swinton's investor group paid $404,000 for the bank's assets. They reopened the following Monday as South Carolina Community Bank.

"It was a very good idea," Brown said about saving the bank. "It was something that could be used to help development in the minority community. I thought the bank would have a special ear to the needs of minority entrepreneurs in the community."

After losing money its first two years, South Carolina Community Bank began turning a profit in 2001 and continued to do so until the economy crashed in 2008.

Today, Benedict owns 600,000 shares in the bank, making it one of the three largest shareholders. Over the years, the college's auditors have continued to write down the value of the investment on the balance sheets, Swinton said.

However, Benedict's holdings in South Carolina Community Bank represent only a small percentage of the college's investments, Swinton said. Therefore, if the bank were to fail, "it would not have any significant effect" on the school, he said.

"As with any organization, investments go up and down," he said.

Today, the FDIC's warnings in its consent order address the same issues that plagued Victory State Bank.

"It's serious," Plath, the banking professor, said of the consent order. "It has the force of law behind it. They're not asking. They're telling the bank to make changes."

The consent order demands that the board of directors become involved in the bank's routine operations and that it submit progress reports to regulators every 30 days. The consent order also addresses the bank's lending practices, its management structure and its profitability.

A high hurdle

The consent order also set a minimum amount of capital the bank must have.

For example, the bank must have tier-one capital equal to 8 percent of its total assets. According to the bank's 2011 second quarter report, its total assets were $81.7 million, but its tier-one capital was $4.3 million. That means the bank is about $2.2 million short of meeting the minimum requirement.

At the shareholders meeting, Swinton blamed the bank's troubles on the poor economy and the national crisis in banking and real estate. When the economy turns south and customers lose their jobs, they no longer can pay back their loans. Because the bank's customers are largely African-American, it was hit even harder than more traditional banks, Swinton said.

He cited the national unemployment rate of 9.1 percent and a recent Pew Charitable Trust report that African-American wealth had dropped to its lowest point in 25 years.

"You know African-American unemployment is twice that, and that's the majority of our customer base," Swinton said. "We're dealing with that."

Since the economy faltered in 2008, South Carolina Community Bank has lost money. In the second quarter, ending June 30, the bank lost $602,000, according to an FDIC report.

Typically, a struggling bank will turn to its leading shareholders for additional capital, said Ely, the Washington-based bank consultant.

In this case, "of the three largest shareholders, two of them can't play," Ely said.

First, it's unlikely a small, private college would be in a position to bail out a bank, Ely said.

Second, another 426,000 bank shares are in the hands of a receiver, who is controlling property once owned by the Three Hebrew Boys, a Columbia investment firm whose partners are in prison for defrauding members out of more than $80 million. The Three Hebrew Boys and their relatives invested $2.2 million at $5 a share in the bank during a stock offering in 2007.

Beattie Ashmore, the receiver who controls the Three Hebrew Boys' assets, would not comment on his plans for the shares. However, he has been trying to liquidate the Hebrew Boys assets for several years and no one has bought the bank stocks.

Today, the stocks are worthless, said Brown, one of the original shareholders.

"I tried to sell mine and I was told they were not worth the paper they were written on," he said.

If the bank were to fail, the shareholders would be the losers. They would not see a return on their investments. People with accounts at the bank are protected by the FDIC and would not lose their money.

There is hope.

Ely, the bank consultant, said he has seen banks in worse shape than South Carolina Community Bank find a way to keep their doors open. But the community bank's infighting among board members and its ties to a private college bring extra challenges.

"When you have all of these other things swirling around it, that makes it tougher," Ely said.

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[redacted] TO, Office of Disciplinary Counsel" 24 April 2017 1 of 3
Atty Williams; Code of our CASE Please Read AND PRAY Thank you.

STATEMENT OF THE FAILURE OF SCCB TO MEET ITS 11 U.S. Code § 362(G) BURDEN OF PROOF

11 U.S. Code § 362 - Automatic stay.

(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues.

The Bank, SCCB, a federally-regulated financial institution, filed its first motion for relief from the automatic stay under 11 U.S.C. § 362(d) on December 9, 2014. [J.A. 140-174.] The motion was amended the next day on December 10, 2014. The Bank's motion estimated and represented to the Court that the fair market value of the Properties was **$450,000.00** based upon the Bank's **federally regulated appraisal (emphasis added)** that was properly prepared by a state licensed qualified appraiser as mandated by the Bank's federal regulator, the Federal Deposit Insurance Corporation (FDIC). Soon thereafter, during the February 12, 2015 hearing, despite having entered absolutely no evidence whatsoever to support its claim and its burden of proof under 362(g-)(1), the Bank proffered to the Court that the fair market value of the Properties "may have been reduced due to the market conditions." [J.A. 179, ¶¶ 8-9.].

During the February 12, 2015 hearing, in an effort to capitalize on an erroneous value of the Properties of $306,000.00 that Mr. Davis, the Debtors' previous attorney, had unwittingly put into the Debtors' schedules, **that the Bank knew to be untrue by virtue of its own federally regulated appraisal of $450,000.00**, the Bank knowingly and willfully, in an effort to gain an unfair advantage over the Debtors' and to deceive the Court, adopted this untrue value as its own value in violation of FDIC: Regulations, Related Acts, 5000 - Statements of Policy, Interagency Appraisal and Evaluation Guideline and The Uniform Standards of Professional Appraisal Practice (USPAP) as adopted in its entirety and made part of State of South Carolina law and federal banking regulations.

My issue is "we have NOT been dealt with Fairly." based on Davis' INAPTNESS

Pretermitting the erroneous $306,000.00 value of the Properties proffered to the Court by Mr. Davis, the Court improperly relied upon and accepted the Bank's absurd claim that **counter to its own federally regulated appraisal that the Bank submitted to the Court (emphasis added)**, the Bank now claimed that the value of the Properties had fallen by 1/3 or $144,000.00 to $306,000 in just 77 days. This in direct contradiction to the Bank's own appraisal that well-documents—well supports the swiftly rising comparable commercial real property values in the community. Based upon this egregious willful misrepresentation of the true value of $450,000.00 of the Properties documented in the Bank's federally regulated properly prepared appraisal, the Court held that the Debtors' had no equity in the Properties.

The decision by the Court to ignore the Bank's own submitted properly prepared federally regulated appraisal in favor of the Bank's now outrageous—wholly unsupported claim that counter to its own federally regulated appraisal, the value of the Debtors' Properties declined by 1/3 in 77 days thereby wiping out any equity Debtors' held shocks the conscious of the reasoned and underscores the Debtors' claim that the Bank had ulterior motives at play to capture and flip the Properties so as to improve its balance sheet to help satisfy the regulatory operational constraints placed upon the failing Bank by its federal regulator.

The law is abundantly clear. The burden of proof under 362(g)(1) of whether or not there was equity in the Properties was with the Bank. There is no burden of proof for the Debtors' as to whether or not there is equity in the Properties regardless of what the Debtors' admittedly inane previous attorney, Mr. Davis, may have proffered to the Court. An untruth is an untruth no matter who proffers it. Again, the law is abundantly clear. The Bank did not meet its burden of proof 362(g)(1) and the Court erred in relying upon the Bank's deceit and effort to gain an unfair advantage over the Debtors' through no fault of their own.

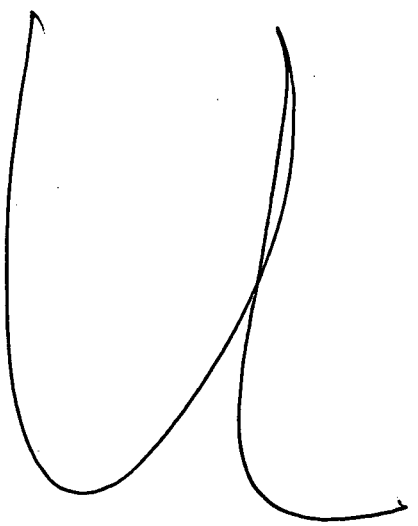
Clearly, by virtue of its own federally regulated properly prepared appraisal that it submitted to the Court, (1) the bank knew at the February 12, 2015 hearing, that the Debtors' had over $144,000.00 of equity in the Properties, (2) that the Bank could not meet its burden of proof under 362(g)(1) to show the Court that the Debtors' had no equity in the Properties, (3) that the Bank knew it had violated both state and federal law when it adopted the erroneous value

proffered by Mr. Davis as its own, (4) that it was engaging in deceit and was knowingly misrepresenting the value of the Bank's own federally regulated appraisal of the Properties to the Court.

For these reasons and others to be shown at hearing, the decision of the Court to hold that the Debtors' had no equity in their Properties on February 12, 2015, was factually wrong and must be remanded.

IF you review the disclosure statement that was confirmed in previous case 11-00625dd. It met the equity test for Confirmation. How then often numerous upfits to the 1811 & 1815 Gervais ~~Street~~ properties to include the 13K grant funding from Richland County did our property drop in value. It Makes No Sense thus the argument of Bank fraud (because of DAVIS' incompetence) to the Court is the only plausible explanation. Please review and Add the disclosure statement of Attorney Reid Smith to disprove there was No equity. This will also assist Agent My les of FDIC to open new investigation. [illegible] with him early May to sign A formal complaint [illegible]

Attach



>From: gawcpi@att.net
>Date: 12/24/14 5:14 am
>To: john@davisbankruptcy.com
>
> Pls see attached financial statement that court request. Gary

- john@davisbankruptcy.com
-
- Dec 31, 2014

To

- gawcpi@att.net

Hide

The 15k I was talking about in January was meant to be taxes plus the remainder to SCCB, not taxes plus 15k. Don't know if this email is from before or after your text that said you could get 10...

--------- Original Message ---------
Subject: RE: Income statement
From: gawcpi@att.net
Date: 12/30/14 12:49 pm
To: john@davisbankruptcy.com

Didn't you just say pay taxes of 12k to 3 Weston and 4500 for year. Paying community and not paying taxes is a seat in itself. O can get funds, o believe for Uncle Sam taxes and a monthly payment. Do not offer Weston 15k but rather 5k to sccb and 10k on taxes at best.

Gary

On Tue, Dec 30, 2014 2:34 PM EST john@davisbankruptcy.com wrote:

>
>Gary:
>
>With the 362 hearing next Wednesday, we will need something to offer the Court so that we can show SCCB interest is adequately protected. I think you need to be able to offer at a minimum enough to pay this year's taxes and catch up the payments for the last year. If we offer Weston 15000 in January and 4500 per month starting in February, I think we can overcome the motion.
>
>John
>
>803 782-1437
>--------- Original Message --------- Subject: Income statement

Text msgs

Feb 10, 2015 at 641 PM from John: 362 tomorrow at 2 pm.

Feb 10, 2015 at 7:27 PM from Gary: We erred by NOT going forth to argue and win motion earlier.

Get case law for our next battle. I will need to have it in the record on Appeal.

You will need to come up with case law to defend and use my previous confirmation of what I offered and they accepted compared to what I have offered this go round.

Im telling you our previous ammo is useless. The judge have already concurred to split my case from the buildings.

Nelson/Barr are at team. We gotta come much stronger.

Thx

Feb 11, 2015 at 9:16 AM from Gary: You can sincerely see the acts are not reasonable as they want these buildings. They may have SBA witnesses and the city folks.

You really need to sound off about an agreement was already settled upon which was accepted and reasonable.

That now to use my absence to approve motion is not based on fairness. U need to have some case law. That's what this judge hangs his hat on.

Feb 11, 2015 at 10:19 Am from John: You said that you could sell the small building and not lose contract, right?

Feb 11, 2015 at 10:40 AM: Yes

Feb 11, 2015 at 10:52 AM From John: Call if you can

Feb 11, 2015 at 4:15 PM from Gary: Did you present sent motions or case law

Feb 11, 2015 at 425 PM from John: Didn't get to that point, because I couldn't present evidence without you, so I couldn't argue similarities

Feb 12, 2015 at 2:16 AM From Gary: Do you want to win this cade? Case?

Feb 19, 2015 at 8:20 PM from Gary: Yes, let's move forward. I will get those docs to you in morning.

Feb 20, 2015 at 4:46 PM from Gary: I spoke with Attorney Alex he received email I sent you. Request you give him call for options. Thanks. Tried to come and drop some funds but no answer. See you when I get back in town Monday evening

Attorney Alex number. (281) 616-2111. He standing by

Feb 23, 2015at 11:35 AM from Gary: Pls email me motion of Nelson last submission.

Feb 26, 2015 at 6:04 AM from Gary: Pls email me transcript

Feb 27, 2015 at 7:55 AM from Gary: Pls email transcript and judge order this morning

Feb 27, 2015 at 8:45 AM from Gary: The worst thing we could do to ourselves is underestimate the opponent.

At this point I do not believe you even know our opponents. The judge is one and I will need to appeal him. Besides this you will have to say in writing " you made a mistake". This will usher in the court to have to balance justice with balance to permit our facts (through the Law) to speak to the 362 motion.
This is the only way we can bridge the gap for victory.
Should the continue his derelict behavior Michele will correct him through my Appeal.

Him and Weston orchestrated this motion to be upheld but everyone looking think you had the largest hand in this likely defeat.

All you had to ask me was "what else have you done to enhance the buildings". I was prepared to say and show that I had the buildings reappraised by Richland Assessors for 421k. That would have sealed our victory even if Weston objected it would have been in the record.

Now I've been asked "what did they offer you for you to know the facts and let the judge believe a lie"??

Please send your motion as quickly as possible. I go and meet with Graham office this morning and maybe state paper. I must pull out all stops in order that community bank do not steal my properties. Even if win confirmation and I loose my buildings its a LOSS!

Feb 27, 2015 at 9:24 AM from Gary: See your email for some ammo. I have yet to receive the judge order or transcript.

Mar 3, 2015 1:34 PM from Gary: Yes, I can have new appraisal by 19th this month. Submit motion
Let me know you received this go ahead for me getting appraisal

Mar 3, 2015 at 1:35 PM from John: Okay. Do you have any idea how soon?

Mar 3, 2015 1:36 P.M. from Gary: 18th this month. I give hi. Check today

Mar 3, 2015 1:40 PM from John: Okay

Mar 3, 2015 at 1:44 PM from Gary: Because Judge is buddy with Weston law firm you must bring up that western attempted to fraud the court which he is known for and the judge will shut their motion down and approve our confirmation. U must understand their relationships overrule justice so we have to take the victory like Alex did with my appeal before.

Mar 4 2015 at 6:08 AM from Gary: John, Pls forward me the motion you submitted yesterday. I need right away.

Mar 4, 2015 at 7:09 PM from John: I will send it in am. The hearing has to be April 4 because of objection time

Mar 4, 2015 7:10 PM from Gary: K

Mar 7, 2015 at 7:50 AM from Gary: Are you sure we will have our day in court or is yr motion a request and the judge have make a decision if he is going to grant us a hearing?

Mar 7, 2015 at 10:53 AM from John: We will get a hearing.

Mar 7, 2015 at 11:08 AM from Gary: Let our next meeting be at the investment location that yr fighting for and not just defending, 1815 Gervais.

Mar 7, 2015 at 4:37 PM from Gary: Do I have to take a class or something. I remember having to take some online hour class about finance? If so, what the website?

Don't want to give judge/trustee ammo

Mar 7, 2015 at 4:38 PM from John: You took it

Mar 7, 2015 at 4:40 PM from Gary: K

Mar 7, 2015 6:45 PM from Gary: Can my buildings bed foreclosed before April motion is ruled on? I believe thats the language in the loan agreement which by lifting the stay it reverts back to??

Mar 7, 2015 at 6:46 PM from John: They have to set a new sale date in state court

Mar 7, 2015 at 7:10 PM from Gary: So the answer is no or yes?

Mar 7, 2015 at 7:17 PM from John: Best of my knowledge it would be impossible

Mar 11, 2015 at 7:07 PM from Gary: When can we meet to discuss judge ruling and starting pulling together the plan for confirmation with answers to support what the judge said we did not bring for him to evaluate a ruling for me?

Mar 14, 2015 at 5:58 PM from Gary: Left monthly report for February in drop box with 100. Will have updated appraisal on Monday. I think u need to subpoena the appraiser to testify and their appraiser. Your thoughts?

Mar 14, 2015 at 6:05 PM from John: We probably want yours. I don't think we want theirs, because we don't want to say the information was previously available

Mar 16, 2015 at 7:25 AM from Gary: John. Please send me the transcript you ordered of the court settlement agreement with attorney Webb and order the 362d meeting transcript that I was absent in which judge ruled that their is no equity in my properties. We will need that right away and prior to hearing on the 6th of April.

Its clear that all that matters to them is a win. Not the law, fairness or facts.

What I'm doing is setting my case up for appeal to have Duncan entire time on bench investigated federally if he is not going to treat me correctly. The error in our last court must be corrected and my plan confirmed or I'm going to devote all eyes on this corrupt system until I Mount enough to remove everyone of them. This is worst than slavery at least is was overt and you knew the enemy.

I will be submitting new evidence in addition to what you already have.

Thx

Mar 18, 2015 at 7:32 AM from Gary: John: How much do I owe you for the first transcript one?

Have you ordered the second transcript yet?

Should I meet with Congressmen Clyburn and Joe Wilson office to explain my complaint? What I sent over to Barr?

Need response back right away in order to confirm appointments.

Need to know what direction to take because I do not believe our motion will be treated correctly as you know and have said in so many words.

Wed. Mar 18, 2015 @ 12:33PM from John: You have a new appraisal that says you have almost 200,000 equity. The judge said from the bench that equity was adequate protection. If he rules against you now, he is contradicting himself

Mar 18, 2015 at 12:40 PM from John: I am going over the documents from your last case to get plan ready to file on time. I will go over it with you asap

Mar 18, 2015 at 7:26 PM from Gary: He contradicted himself already. when he let Weston out of the settlement agreement by letting nelson say it was not consummated because it was not published.
His discretion is wide and you can't or won't look at reality. This is very personal to Duncan and a major steal for the bank.

Its very difficult to win on appeal so I will go in and speak with those who can STOP this rail road possibly, the media. This is crazy how I'm suffering over what I told you we should not settled
Again I'm asking you should I go to others for help or you know something I don't. When you read his relief from stay not once, in any of the seven pages, did he acknowledge me staying the course of the confirmation or paying all taxes, repairing building but rather mimicked Nelson argument entirely.
The appraisal is not going to be enough. We need the agreement in writing now before we go into court from community bank accepting agreement. Do not give him chance to rule. This guy is dirty.

Mar 18, 2015 at 7:39 PM from John: A) if we hadn't tried to settle when you were saying the building was worth less than their appraisal, the result would have been the same. B) he didn't contradict himself in the settlement agreement, he just kept saying it wasn't before him, despite my pointing it out. I put it specifically in the motion to amend C) I really don't know that a public attack is the best way to change his mind. If anything, I believe it would make him more likely to do everything he possibly could to make the point that he was already right, and I don't think your payment history is going to win you the court of public opinion We now have what he announced in court was the winning argument. I think that's the best way to go.

Mar 19, 2015 at 7:58 AM from Gary: Please read the facts of what I sent you. The judge have not dealt fair from the previous case, 362d, settlement agreement, and in his rulings thus far. Its as if you have made a deal for yourself with Barr boss or something to serve me up. I told you repeatedly this court is not fair, that the bank is trying to steal building. Now you see 200k equity. Its been other all along.

Please put package together and let us meet. This is not going to work that I'm brought into a kangaroo court only to hope this judge change his string of bad behavior and you again get your eyes opened at my 200k expense.

I believe you should have a written agreement between sc bank, each of the people I asked for to be brought in to testify and get everything on record. Again please order the 362 meeting transcript that I was absent.

Mar 19, 2015 at 12:14 PM from John: Gary if the bank would give you a written agreement, we wouldn't have had to go to a hearing. You told me the building was worth less than their appraisal the whole time. You were in there while we were talking about a settlement arguing that part of the agreement had to be that they get a lower appraisal and accept it. I can't go in there and argue that he should rule for us because we're idiots. I CAN go in there and argue that he should rule for us because the work you had done has improved the value of the building. Since you don't ever listen to what I think, you are welcome to call Alex for his opinion. You are also more than welcome to hire another attorney or represent yourself if you feel like I have made some deal to sabotage you. Just let me know and I'll file a motion

Mar 19, 2015 at 12:32 PM from Gary: I think that you did not listen at the very first meeting and since you have cursed me and repeatedly do not understand that the city of Columbia and sc community bank are trying to sell the facility and once you present some which I have the city will adviser bank to settle now. This is worth the meeting between us. Call me when you ready to sit for 30 minutes. Then make the offer to community bank. Even so, if they reject you can tell the judge you again attempted in good faith to reach an agreement. That will also go yo our advantage

Mar 21, 2015 at 5:50 PM from Gary: Request letter from SC Community Bank authorizing the sale of 1811 Gervais building only. I concede all sale funds from property to go loan payoff. Include property hoist and removal must be subtracted from sale.

Mar 21, 2015 at 5;51 PM from John: Do you have a buyer?

Mar 21, 2015 at 5:52 PM from Gary: No but a very good realtor that will not move forward until there is a clear way for sale.

Mar 24, 2015 at 9:45 AM from Gary: I worked out a payment plan for scdew should I pay them a payment to engagement and does that count as taxes for one of the confirmation members we need or do you want to look at it before I move forward?

Should you request in writing the people I ask to testify to appear in court by court order now, so its not to late and we do not get them?

Mar 26, 2015 at 12:31 PM from Gary: John what's the deadline we have to have exhibits turned so the other side get time to prepare. We can we meet?

Apr 2, 2015 at 8:25 Am from Gary: What is the amount that I need to pay IRS per month to get them to confirm? Need to know right away to input into the budget.
Gary

Apr 2, 2015 6:29 PM from Gary: Did you subpoena Cruder the apprasaier?

Apr 3, 2015 at 11:39 AM from Gary: Matthew Crider (864) 444-1689 (864) 232-1788

Apr 3, 2015 at 3:43 PM from Gary: Remember the caddy is secured by its title. How bout their vote and payment?

Apr 3, 2015 at 3:45 PM from John: My understanding is that any yes vote makes it okay so long as everyone gets as much as they would at liquidation

Apr 3, 2015 at 3:46 PM from Gary: Got it.

Apr 3, 2015 at 3:48 PM from Gary: Do you have Yvette Sumter for 4500 dollars and Ken Wiggins at 5200 as debtors? They would vote yes for me? Do you have their information?

Apr 3, 2015 at 3:51 PM from John: I am out of office, but all unsecured creditors count as one class, so they probably don't help much.

Apr 4, 2015 at 7:21 AM from Gary: Add them as they need to vote unless you have other unsecured creditors that will vote to approve. Beside its only a few key strokes and they maybe the one that help me finance my appeal should this go wrong

Have you submitted what the judge and Nelson said was unaccepted documents? The grant award letter with all the signatures and the 1815/1811 Gervais buildings insurance declaration proving I have coverage? If not, please do on Monday. I have the approved paid for plans for 1815 Gervais to include into heating record. This too is NEW evidence as the City of Cplumbia approved them Tuesday. I have dropped it off at your office through your front door slot.
These are the enhancement for the 3000 square feet downstairs to include s deli. Please submit them.

Also will have associate of state paper there and state representative person at hearing.
I hope we can whoop Weston Nelson butt as he thinks we (me & you) are worthless opponents in court against him.

To God be the glory.

Apr 4, 2015 at 6:07 PM from Gary: Also, pls submit the full contracts given to you for Shaw AFB and Fort Jackson to fulfill my proof of the budget and ability to plan for the confirmation plan. Be CERTAIN to bring copy of SC Community Bank Apprasial. The judges discretion is wide and deep. He accepts what he will its up to us to present it based on procedures. The Richland County Certified Assessors Report is new evidence that refutes the newly discovered error. Please have that included into record. Its certification stamp, date and signature of Richland County Official makes it new evidence. The judge is going to do what he wants. That's the fact. I'm setting up the appeal so it makes him truly consider his discretion. Michele Obama Child's will determine if Duncan actions are abusive. Again, please submit all the items I requested be submitted. This is our last chance of getting the facts in. Thanks

Apr 6, 2015 at 4:52 PM from Gary: What do we do for confirmation now

Apr 6, 2015 at 4:53 PM from John: I submitted plan and disclosure statement. Court will set a date for hearing

Apr 6, 2015 at 4:58 PM from Gary: Please send for each month the the same statement of income and expenses and the monthly statement sent you that you sent to barr

Apr 6, 2015 at 5:07 PM from Gary: I need confirmation.

April 7, 2015 at 12:11 AM from Gary: U were seriously unprepared before the court. Everyone said and saw this. Please send me copy of what you sent for confirmation right away. Why wasn't privy to this? I do not want my case dropped to a chapter 7 cause you decided not to prepare it properly.

April 7, 2015 at 11:05 PM from Gary: Please halt all work on my case. Me and my family believe you are either on drugs, been bought off or to ignorant to compete .my case for my interest. When is your first appointment time. I want my money back and will remove you.

U keep failing, where is my copy of the confirmation. I requested it prior to submission.