

IN THE CIRCUIT COURT NO. 2 FOR CLARK COUNTY

STATE OF INDIANA

STATE OF INDIANA,

Plaintiff

vs.

CASE NO. 10CO2-1208-PL-088

Special Appointed Judge:

Susan Orth

KEVIN ZIPPERLE,
MARY LOU TRAUTWEIN-
LAMKIN, SHARON CHANDLER,
and FRANK PRELL

Defendants.

DEPONENT: SALLY MILLER

DATE: FEBRUARY 6, 2015

REPORTER: ALISHA McRAE

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A P P E A R A N C E S:

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ALSO PRESENT:

FRANK PRELL (Defendant, self-represented)
KEVIN ZIPPERLE (Defendant)
MARY LOU TRAUTWEIN-LAMKIN (Defendant)
SHARON CHANDLER (Defendant)

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S T I P U L A T I O N S

The deposition of Sally MILLER, was taken pursuant to Subpoena, at the offices of Culotta & Culotta LLP, located at 815 E. Market Street, New Albany, Indiana 47150, on Friday, February 6, 2015. Said deposition was taken for the purposes of discovery, to be used in accordance with the Indiana Rules of Civil Procedure.

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PROCEEDINGS

SALLY MILLER, called by the Defendants,
having been first duly sworn, was examined and
deposed as follows:

* * *

EXAMINATION

BY MR. CULOTTA:

Q. All right. Now, Sally, you know, I'm
Clay. I represent the defendants in this matter
other than Frank Prell, who is here unrepresented.
His counsel has withdrawn. He is now a judge in a
Floyd County court.

A few basic questions that you probably
answered before, but I need to go ahead and go
through.

Have you ever given a deposition before?

A. No.

Q. Okay. You've watched - I know you've
been through a bunch of them?

A. Yes.

Q. Bottom line is with regard to the basic

1 kind of rules, you know, I'm going to ask questions,
2 and if you can give verbal answers yes's, no's,
3 whatever the answer might entail.

4 A. Yes.

5 Q. Just no head nods or uh-huh's or
6 uh-uh's, obviously, because it's got to go down.

7 I assume you're going to read and sign?

8 A. Yes.

9 Q. Okay. And then if you don't understand
10 any questions I ask, please ask me to rephrase it or
11 tell me that I don't -- you know, that you don't
12 understand it. And I'll do my best to try to
13 rephrase it so that it's understandable.

14 A. Okay.

15 Q. With that, let's get started.

16 A. Okay.

17 Q. Let's start with some of the basics.

18 Where did you go to school? What's your
19 educational background?

20 A. I have a bachelor's degree in
21 management, and I have an associate's degree in
22 business administration.

23 Q. And where did you get those degrees?

24 A. Indiana Wesleyan.

25 Q. And when was that?

1 A. I think it was about 15 years ago. I
2 couldn't give you the exact date.

3 Q. Okay. When did -- from a working
4 perspective, what is your work history?

5 A. Well, my immediate work history is that
6 I've been with the Attorney General's Office for
7 eight years. Prior to that, I was 15 years with
8 Nelnet, which is a student loan company. Prior to
9 that, I was --

10 Q. I'm sorry. Nelnet?

11 A. Nelnet, N-E-L-N-E-T.

12 Prior to that, I was with GMAC Mortgage.

13 Q. Okay. And you're -- you've been with
14 the AG's Office for the last eight years?

15 A. Yes.

16 Q. What has been your duties and
17 responsibilities with the AG's Office?

18 A. Well, I've held two different positions.
19 The initial position was analyst, and the second was
20 investigator. Responsibilities are reviewing
21 consumer complaints and investigating consumer
22 complaints. I also have a third -- I also have an
23 additional responsibility and title, and that is
24 workflow administrator. And that means that I
25 review all of the consumer complaints that come into

1 our area and assign them to different deputy
2 attorney generals.

3 Q. With regard to the analysis, you said
4 initially you were an analyst.

5 A. Yes.

6 Q. What did that entail?

7 A. Having a consumer complaint, having a
8 response to that consumer complaint, obtaining any
9 additional information needed to be able to come to
10 a conclusion on that consumer complaint.

11 Q. And how does that differ from your
12 current job description, which is investigator, and
13 dealing with consumer complaints?

14 A. The complaints assigned to the
15 investigators are more complex than the analyst
16 position. There are more interviews involved, more
17 documentation received and asked for.

18 Q. Who makes the determination as to
19 whether it goes to an analyst or to an investigator?

20 A. The deputy attorney general who has been
21 assigned to the case makes a decision.

22 Q. So is a case first, then, assigned to a
23 deputy AG?

24 A. Uh-huh.

25 Q. And then goes --

1 A. Yes.

2 Q. Okay. So for instance, in this
3 situation with the case that we have here, the --
4 the complaints that were filed with regard to The
5 Harbours, who initially saw those complaints?

6 A. Our deputy director at the time,
7 Gabrielle Owens.

8 Q. And --

9 A. She is --

10 Q. I'm sorry. I didn't mean to cut you
11 off.

12 A. Okay. Okay. That was my answer.
13 That's it.

14 Q. And she -- when was she a deputy AG?

15 A. She was a deputy AG the whole time I was
16 there, up until sometime in the last year and a
17 half. I'm not sure what the date was. Sometime in
18 the last year and a half, she left and went to
19 another government agency.

20 Q. And her only involvement with this
21 particular matter was the assigning of the consumer
22 complaints?

23 A. She -- when you say "her only
24 involvement, "what does that mean?

25 Q. What involvement did she have in this

1 Harbours case beyond simply initially getting the
2 complaint, a complaint, and then assigning it?

3 A. I would say that the only additional
4 input that she had was -- and this was typical that
5 when a deputy attorney general has a case, it's
6 typical for them, as a case goes along, to sometimes
7 confer with the deputy attorney -- I mean, with the
8 deputy director on how that case is going, if they
9 need direction, that type of thing.

10 Q. And who is a deputy director that's, I
11 guess, assigned to handling or overseeing this
12 matter?

13 A. What was it at the time? Is that what
14 you're asking?

15 Q. Okay. Well, we'll go to -- who was it,
16 and has it changed?

17 A. Gabrielle Owens, and as I stated, she
18 has left now.

19 Q. She was a deputy AG. Who was a deputy
20 director?

21 A. No. She was the deputy director.

22 Q. Oh, okay.

23 A. Sorry if I didn't make it clear.

24 Q. No, it's okay.

25 And then she assigned --

1 A. She used to look at all of the
2 administrative -- not the administrative, consumer
3 complaints that came in and assign them to the
4 deputy attorney general.

5 Q. Okay.

6 A. I do that now, but at that time she did.

7 Q. Okay. And was that the majority of her
8 position to address those issues?

9 A. No. She had hundreds of other
10 additional --

11 Q. Okay.

12 A. -- responsibilities.

13 Q. Okay. When did you first become
14 familiar with or have any knowledge of The Harbours
15 in the --

16 A. Somewhere back in 2010.

17 Q. And how did it first come to your
18 attention?

19 A. It came to my attention because those
20 cases were assigned to Deputy Attorney General Jenny
21 Beller, and she assigned those cases to me.

22 Q. And how did you initially get involved
23 with -- let me rephrase.

24 What was your initial involvement? Take
25 me through your investigative process.

1 A. I receive the consumer complaints.

2 Q. Uh-huh.

3 A. Reviewed the consumer complaints. At
4 the time when it was learned somehow at The Harbours
5 that I was the investigator, I started getting
6 additional information from people at The Harbours.
7 And then it became such -- there seemed to be such
8 an outcry from people who were requesting help that
9 we eventually set up a meeting with those people and
10 the board members so that we could try to -- because
11 at first, we weren't sure what was going to come out
12 of it, if anything.

13 Q. And who was it that you spoke to?

14 A. I'm not -- in what situation?

15 Q. Well, who -- well, you said that -- that
16 there was an outcry from people. Who were the
17 people that you heard from with regard to The
18 Harbours?

19 A. People who made the consumer complaints.
20 Did you have copies of the --

21 Q. I've got them. I think they're maybe
22 even attached to the complaint, but if you know off
23 the top of your head the names of the individuals
24 you spoke to --

25 A. There was between 15 and 20 of those, so

1 I can't remember all of the names.

2 Q. Did you have -- let me ask you this.
3 Your initial contact with The Harbours began in 2010
4 sometime?

5 A. Yes.

6 Q. When was it that you then started having
7 conversations with and talking to people from The
8 Harbours?

9 A. In 2010.

10 Q. Did you contact them, or did they
11 contact you?

12 A. Mostly, they contacted me.

13 Q. Okay. And your response to them, what
14 was your -- if they contacted you, what was the
15 nature of those contacts?

16 A. Did you read all the e-mails that we
17 sent you?

18 Q. Uh-huh.

19 A. Because that was everything.

20 Q. I know, I just -- I'm asking you.

21 A. Oh, okay. There were, "Please help us.
22 We're being" -- "we live in a gestapo-type area. We
23 have problems that we can't" -- "we have no say so
24 in our homeowners association. We're banned from
25 meetings. We're charged for things we shouldn't be

1 charged. We're being treated badly. We have no
2 help. We have no hope. Please help us." That type
3 of thing.

4 And I would say, "What do you mean?"

5 And then they would say, "Well, this is
6 what I mean."

7 And then I'd say, "Well, what do you
8 mean by that?"

9 And the conversation would be going back
10 and forth like that.

11 Q. Okay. And when was it that you went
12 down and met with these people on The Harbours
13 board?

14 A. I believe it -- and this was probably
15 the only date I'm going to give you during this
16 deposition because I'm terrible with dates -- but I
17 believe it was August 2, 2010. I'm not positive,
18 but just from notes that I had, I believe that was
19 the day.

20 Q. Was that 2010?

21 A. I believe so. Yeah, I think so.

22 Q. Do you recall who was at that meeting?

23 A. Well, there was two groups. They were
24 two people that complained, and then it's -- and
25 that was in the morning, I believe, or vice versa.

1 And then we also spoke to board members.

2 Q. Okay. Do you remember who was at either
3 one of those two meetings by name?

4 A. Well, the meeting with the complainants,
5 there were 30 to 40 people in that room, and I
6 couldn't tell you who was there.

7 Q. Was it an open meeting, or was it by
8 invitation?

9 A. Some -- I had talked to someone, and I
10 don't recall who, and said, "It sounds like people
11 would like to meet with us. So we're going to be
12 down in Jeffersonville. Tell whoever wants to come
13 to come." And so I would say that's probably an
14 open meeting, yes.

15 Q. But that's -- that's just an assessment
16 based upon you had said whoever wants to meet, tell
17 them to come meet.

18 A. Right.

19 Q. But that doesn't necessarily indicates
20 that the person that you spoke to posted it, saying,
21 "Hey, we have a meeting to the AG's Office." Would
22 that be a fair statement?

23 A. I don't know.

24 Q. Okay.

25 A. Based on the number of people that

1 showed, the word got around.

2 Q. Who did you meet with with the board?

3 A. All the current -- the board members at
4 that time, I believe. I don't know if there were
5 any missing. There were quite a few people in the
6 room. There may have been one or two extra -- there
7 was also [former property manager], I believe. She is a
8 community director - was there. And there may have
9 been one other person that I don't recall who it
10 was.

11 Q. Okay. And from the discussions with the
12 board, what did they -- what were they telling you
13 with regard to what was going on?

14 A. That there were a bunch of
15 troublemakers, not a great deal, but troublemakers
16 that made life difficult for everyone else there.

17 Q. And from there did you take back with
18 you from the discussions you had with the board and
19 the discussions you had with these individuals
20 and -- what was your assessment of both?

21 A. Bunch of unhappy people and a bunch of
22 unhappy people.

23 Q. Okay. And how does that -- how does
24 that necessitate the involvement of the AG's Office?

25 A. How does that necessitate what? I'm

1 sorry.

2 Q. The involvement of the AG's Office?

3 A. How did it necessitate? I'm not sure
4 what you mean.

5 Q. Well, I mean, you've got two groups of
6 unhappy people. Why was the AG's Office involved?

7 A. Because we had consumer complaints, and
8 we're statutorily obligated to investigate consumer
9 complaints.

10 Q. And your assessment was that you had two
11 groups of unhappy people?

12 A. Right.

13 Q. Is it your statutory duty to fix it?

14 A. It's my statutory duty to investigate.

15 Q. Uh-huh. But then from the point of
16 after you had the discussions with people, what is
17 your obligation from there?

18 A. To further the investigation.

19 Q. Okay. But what are you --

20 A. Investigation wasn't complete. That was
21 just one part of it.

22 Q. Okay. After you met with the board and
23 the people, what was the next step of your
24 investigation?

25 A. Well, we also met with the mayor. We'd

1 received a letter from the mayor asking us to
2 investigate.

3 Q. Was this before or after the consumer
4 complaints?

5 A. Well, there were two different groups of
6 consumer complaints. Had I already mentioned that?

7 Q. No.

8 A. Okay. There were consumer complaints
9 that came in in 2009, and those went to an area of
10 our office called Consumer Mediation. I think they
11 hadn't had a lot of experience with homeowners
12 association cases, and it was initially thought that
13 maybe there was some mediation that could be done.

14 Q. Okay.

15 A. Second group came in around 2010, and I
16 believe that the mayor sent a letter before those,
17 although I didn't see it before that, but I had
18 knowledge that he did.

19 Q. Do you have any knowledge as to how
20 would the mayor even have got involved?

21 A. I believe there were so many unhappy
22 people complaining to him from The Harbours that he
23 felt that he had a need to do something.

24 Q. Other than Ms. Beller, and I don't want
25 to know what you all talked about, but other than

1 Ms. Beller, have you spoken with anyone else at the
2 AG's Office about The Harbours?

3 A. Yes.

4 Q. Who?

5 A. Derek Peterson.

6 Q. And who is he?

7 A. He is a deputy attorney general who is
8 now assigned to this case.

9 Q. When did he become assigned?

10 A. When -- you're familiar with Paul
11 Schilling who was --

12 Q. Uh-huh.

13 A. When Mr. Schilling transferred to
14 another part of our office, then Mr. Peterson has
15 taken his place, although he hadn't had much of an
16 input so far.

17 Q. Okay. Other than Derek Peterson who
18 else have you spoken to about this case?

19 A. No one.

20 Q. Have you spoken to Attorney General
21 Zoeller about this case?

22 A. Never.

23 Q. Do you ever speak to him about any cases
24 that you're involved with?

25 A. No. I would find that to be

1 inappropriate.

2 Q. Why is that?

3 A. Because he has way bigger things to deal
4 with than the individual cases. I've never seen him
5 get involved with an individual case, not in our
6 area. I'm not aware of anything in our area. I
7 can't speak to any other areas.

8 Q. Prior to getting involved with this
9 particular investigation, did you know anyone at The
10 Harbours?

11 A. No. I never heard of The Harbours or
12 heard of anyone at The Harbours. Didn't know it
13 existed.

14 Q. Where are you originally from?

15 A. Columbus, Ohio.

16 Q. And when did you go over -- when did you
17 come to, I guess, Indiana, or I assume now you're in
18 the Indianapolis area?

19 A. About 35 years ago.

20 Q. Is there anyone at The Harbours now or
21 at least after you got involved with the
22 investigation that you knew or realized that you
23 knew that was a resident at The Harbours?

24 A. No.

25 Q. Other than that one meeting that you had

1 with the board back in August of 2010, have you had
2 any other meetings with either the whole board or
3 individual members of the board?

4 A. We've met with Sharon Chandler, and
5 we've met with Mary Lou, Doug Farnsley, several
6 of -- Gary Davis. I can't remember who else
7 actually.

8 Q. And were these -- what was the nature --
9 well, we'll take them one at a time.

10 What was the nature of the meeting with
11 Sharon Chandler?

12 A. We had a separate consumer --

13 MS. BELLER: I have to -- the objection
14 is that, generally, any complaints that are brought
15 against a person holding any kind of professional
16 license, is held, under -- by statute, in strict
17 confidence. And we're not allowed to discuss any
18 complaints that did not result in a charge in front
19 of the board.

20 MR. CULOTTA: Okay.

21 MS. BELLER: By statute.

22 Q. (BY MR. CULOTTA:) Sure. Okay. Then
23 let me ask you this way. Was the nature of your
24 meeting with Sharon Chandler something related to
25 anything that made its way into the complaint?

1 MS. BELLER: I'm good with that.

2 THE WITNESS: I honestly can't believe
3 if I've met with her regarding this complaint. I
4 can't -- I mean, we've been for her deposition, and
5 I think we interviewed her. I can almost see us
6 sitting at Dawn Elston's office. So I think we did,
7 but positively right now, I'm not sure.

8 Q. Okay. What about Mary Lou?

9 A. Yes. We had an interview.

10 Q. You met with her regarding the issues --

11 A. Yes.

12 Q. -- related to the complaint?

13 A. Yes.

14 Q. What was the nature of the discussion
15 you had with her regarding the issues in the
16 complaint?

17 A. I can't recall exactly, but it was just
18 general -- it was general questions about what was
19 going on at The Harbours, what her responsibilities
20 were as a board member. I think we may have asked
21 her questions about [former property manager's] time cards.

22 Q. And when you say we, who is we?

23 A. Jenny and I. I've not met with anyone
24 that Jenny Beller wasn't there.

25 Q. Did all these meetings occur at Dawn's

1 office?

2 A. I can't -- I believe so.

3 Q. Was there any information or any
4 materials that any of these people were asked to
5 bring with them when they met with you?

6 A. I believe [former property manager] was asked to
7 bring information.

8 Q. Okay.

9 A. I mean -- okay. I'm sorry.

10 Q. No, go ahead. Go ahead.

11 A. We've met with Kevin, and I believe we
12 asked him for information also to bring with him.

13 Q. You met with Doug Farnsley. What was
14 the nature of the discussions with him?

15 A. It was really concerning -- a lot of it
16 was concerning the open board meetings and the
17 closed board meetings and what his relationship was
18 with Kevin.

19 Q. And when you say open and closed
20 meetings, what do you mean by that?

21 A. It was our understanding that a lot of
22 the board meetings were closed to certain people or
23 closed in general.

24 Q. You mean an executive session?

25 A. No. I mean in general, general regular

1 homeowners association board meetings where people
2 are allowed to come. There were some people that
3 were not allowed to come.

4 Q. And what was -- were you given an
5 explanation as to why those people were prohibited
6 from coming?

7 A. I was given lots of explanations, and
8 some of them were that they were discriminated
9 against, that the board members didn't want to hear
10 what they had to say because they wouldn't be able
11 to answer the way that would please the homeowners,
12 that they were considered disruptive, that they
13 were -- and this is a term that I have heard many
14 times, which is I feel is very discriminatory and
15 unflattering -- malcontents. So that they were not
16 allowed to attend the board meetings -- or
17 homeowners association meetings.

18 Q. But the term malcontent simply means
19 someone who's not content, correct?

20 A. I think everyone has their own
21 interpretation what malcontent means. It can be
22 used in a very negative way.

23 Q. But that technically would be the
24 Webster's dictionary definition, wouldn't it?

25 A. I would have to look at it.

1 Q. Was there any -- other than people
2 saying that they were not allowed to attend, is
3 there anything that -- that they provided to you
4 that says, "You are not allowed to attend this
5 meeting" or a particular meeting?

6 A. I believe I've -- Doug Farnsley told me
7 there were people who were not allowed to attend
8 meetings.

9 Q. Okay. Was Doug allowed to attend the
10 meetings?

11 A. He was on the board.

12 Q. Okay. What was the -- what did Doug
13 tell you -- because, obviously, people who were not
14 allowed to attend believe they were being
15 discriminated against and so forth. But from
16 someone who was on the board, what was the
17 explanation that was given as to why they were not
18 allowed to attend?

19 A. That he -- they were -- that they'd had
20 problems with these people, and they were afraid
21 they'd be disruptive.

22 Q. Okay. And is that an improper reason
23 for disallowing someone to attend the meeting?

24 A. I wasn't there and saw the circumstances
25 of how they were disruptive or why.

1 Q. Would it be inappropriate for a board to
2 try to keep decorum by preventing people from
3 attending?

4 A. Not in my opinion, no.

5 Q. Okay. So if someone was being
6 disruptive in the opinion of the board, it would not
7 be inappropriate for them not to be able to attend?

8 A. I don't believe so, no. I believe
9 everyone has a right to attend the board meeting or
10 the homeowners association meeting, and maybe they
11 have something to be disruptive about. I'm not
12 sure.

13 Q. But if the board -- if the board is
14 trying to keep decorum and there are a handful of
15 individuals who were disrupting the business of the
16 board, in your opinion, it would be appropriate to
17 allow those individuals to disrupt the meeting of
18 the whole?

19 A. I would allow them to say what they had
20 to say. I believe everyone there who paid
21 homeowners association dues has their right to a
22 say. Maybe they're being disruptive because they
23 haven't been heard or something is not right, but I
24 think freedom of speech and the right of the people
25 to be heard is very important.

1 Q. If they have already said that -- well,
2 let me move on for a moment.

3 What was the nature of the discussions
4 you had with Gary Davis?

5 A. Part of it was his deal with selling his
6 condominium and purchasing another. Part of it was
7 what was his experience on the board and with how
8 people were acting and how people were treated --

9 Q. I'm sorry. I didn't mean to cut you
10 off.

11 A. That's it.

12 Q. What -- when you said purchase a condo,
13 what do you mean? Which condo? Are you referring
14 to any in particular or --

15 A. His -- when he sold his purchase -- I'm
16 sorry, condominium to Kevin and bought his
17 subsequent condominium.

18 Q. Okay. What was the nature of the
19 discussions you had with him regarding that?

20 A. How did that deal happen. How did that
21 deal occur.

22 Q. Okay. What did he tell you?

23 A. I have notes, but I don't recall the
24 exact conversation.

25 Q. Generally, what was it about?

1 A. It was about how Kevin bought his condo,
2 and then he bought another one.

3 Q. Was there anything about the purchase
4 and sale that -- of the sale and purchase of the
5 other condo that struck you as something that was --
6 that warranted further inquiry?

7 A. I did not form an opinion on that.

8 Q. Okay. It's made its way into the
9 complaint.

10 A. Yes.

11 Q. So, obviously, somebody formed an
12 opinion on that.

13 A. That would be true.

14 Q. Who formed that opinion?

15 A. Deputy Attorney General Jenny Beller.

16 Q. Okay. And did she form that opinion
17 based upon information that you provided to her, or
18 did -- if you know?

19 A. I could say that Jenny Beller was with
20 me in every discussion I had with anyone at The
21 Harbours and was with me when I gathered
22 information, so she wouldn't need anything from me
23 in order to form an opinion.

24 Q. In your review of the information
25 regarding the sale and purchase of 312, do you

1 believe there was anything inappropriate about it?

2 A. I don't have an opinion on that.

3 Q. At all?

4 A. At all.

5 Q. So if I asked you to testify at trial of
6 this matter, you would have no opinion on that?

7 A. Not without reviewing all my notes.

8 Q. Well, as we sit here today -- I mean,
9 this case is now three or so years old. I would
10 assume that you've been through much of this and
11 your, obviously, involvement began back in 2010 at
12 the earliest, or the latest perhaps, that's roughly
13 five years ago.

14 What is your opinion with regard to the
15 purchase and sale of 312?

16 A. I don't have one. I don't have an
17 opinion. Let me just say that everything I've done
18 as part of this investigation was directed by Jenny
19 Beller. I gathered only information. She did all
20 the legal analysis and formed any opinion and filed
21 this complaint.

22 Q. But she won't be testifying when we get
23 to trial. So with regard to that, I'm going to
24 somewhat hold that question open at least for right
25 now --

1 A. Okay.

2 Q. -- and we'll come back to that and/or
3 ask for additional information later.

4 What sort of resolution did you try to
5 work out between the people who were disgruntled and
6 the board or anyone else? What was the nature of --
7 obviously, you had the meeting. Was there any
8 attempts or efforts to try to bring the two groups
9 together?

10 A. No. It's not our job. We bring our
11 part of consumer mediation. We do investigations.

12 Q. Other than the individuals that you said
13 you've spoken to with the AG's Office, have you ever
14 spoken to anyone outside -- and the people at The
15 Harbours, have you ever spoken to anyone outside the
16 AG's Office, either in the other private or
17 governmental entity, regarding The Harbours and any
18 events at The Harbours?

19 A. We spoke to the mayor.

20 Q. Okay. Did you ever speak to Fannie Mae?

21 A. I did not myself personally.

22 Q. Do you know if anyone else at the AG's
23 Office spoke to Fannie Mae?

24 A. I'm not positive. Jenny Beller may
25 have, but I'm not positive.

1 Q. What about with Bank of America?

2 A. I believe we have in our area some
3 people who help with loan modifications, people who
4 are in trouble with their mortgages, they have
5 contacts with Bank of America. And I believe Jenny
6 may have asked one of them a question about the
7 condos that Kevin and Mary Lou have up on the top
8 floor.

9 Q. Who were the individuals that have these
10 contacts in yours office that might have a contact
11 with Bank of America?

12 A. Well, we have at least four people who
13 have contacts with. I don't know who Jenny asked to
14 ask.

15 Q. Who are those four people?

16 A. Amber Cordova, Ed Hutchison, Kristi
17 Corso, Greg Getsumer.

18 Q. And what is their section, again, sorry?

19 A. It's called Loan Servicing.

20 Q. You never spoke to any of these people
21 or had any conversations with Bank of America?

22 A. I've never spoken with Bank of America.

23 Q. And you had no conversations with Fannie
24 Mae?

25 A. Not to my recollection. If I did have

1 contact with them, which I don't recall, it would
2 have been by e-mail, but I don't recall that.

3 Q. So if in the 900-plus e-mails that we
4 received there were no e-mails between you and
5 Fannie Mae, that there's likely been no conversation
6 between you and them?

7 A. Yeah, because I kept all my e-mails and
8 they were forwarded to you.

9 Q. Other than the people who -- who were
10 the complainants and filed the complaint and the
11 board members, did you ever speak to any other
12 Harbours residents?

13 A. There were other Harbours residents that
14 contacted us that had not filed consumer complaint,
15 several of them.

16 Q. Were they -- the people that contacted
17 you, were they people that were sympathetic to the
18 people who were the complainants, or did you also
19 get contacted by people who were sympathetic to the
20 board and the board's actions?

21 A. Both.

22 Q. Okay. With regard to the individuals
23 what were sympathetic to the board and the board's
24 actions, what was the nature of those
25 communications?

1 A. Well, the most constant person who
2 contacted regarding the board actions was Cathy
3 Quiggins. And the nature of those was that the
4 Attorney General's Office doesn't know what they're
5 doing. The Attorney General's Office is on the
6 witch hunt. The Attorney General's Office is being
7 persuaded by people who are just unhappy with life
8 and have nothing better to do. And I received those
9 quite often.

10 Q. Was there anyone else, other than
11 Ms. Quiggins, that contacted you regarding the --
12 that was favorable to the actions of the board?

13 A. There may have been one or two more, but
14 I don't recall that. I'm just giving it the benefit
15 of the doubt that there might have been.

16 Q. Did you ever have any communications
17 with any of the employees or former employees or --

18 A. Yes.

19 Q. Who did you speak to?

20 A. [Maintenance manager], [former property manager],
21 a former director, and I can't remember her name, Stacy[e]
22 Daugherty, I believe.

23 Q. What was the nature of your
24 communication with [maintenance manager]?

25 A. With [maintenance manager]?

1 Q. Uh-huh.

2 A. To ask him about -- one of the
3 allegations in this case was that there were some
4 people in The Harbours who when they needed
5 maintenance, received their maintenance from Reed
6 without any charge. And then there were others who
7 had been labeled as malcontent -- another reason why
8 I don't like that word -- who were charged for. We
9 asked him about that. We asked him, I believe,
10 about an incident with -- no, I don't think we asked
11 him that. We asked him about his relationship with
12 Kevin and who was it that gave him all of his
13 orders.

14 Q. And let's take these kind of one at a
15 time.

16 A. Uh-huh.

17 Q. With regard to the maintenance, what
18 sort of maintenance was -- first of all, I guess,
19 how did that particular incident come to the light
20 of the Attorney General's Office?

21 A. There were several people who in their
22 consumer complaints stated that the people who were
23 Kevin's favorites were not charged for maintenance
24 when they asked for it. But that his friends --
25 that the malcontents, so to speak, were charged, but

1 his friends were not, the people who were favorite.

2 Q. What was the nature of the maintenance
3 that was being charged versus -- well, let me --
4 that was being charged?

5 A. People who had plumbing problems, people
6 who had electrical problems, any type of thing,
7 furnace problem, whatever they had that a
8 maintenance man would take care of.

9 Q. Inside their individual condominiums?

10 A. Yes, yes.

11 Q. And with regard to the services or the
12 maintenance that were being done regarding -- by
13 the people who were not paying, were those the same
14 sort of services that were being conducted inside
15 someone's private residence?

16 A. Yes.

17 Q. Do you have any records of any services
18 that were rendered that were paid for and the
19 identical services that were rendered that were not?

20 A. No. We don't have that information. We
21 did receive a list of maintenance that had been
22 done, but it was hard to determine if some people
23 had to pay and some didn't. It was not easy to make
24 a clear determination from the records we got.

25 Q. So it could very well be that for

1 services that were rendered inside someone's private
2 residence, everyone paid for those?

3 A. It's possible.

4 Q. What about your conversations with Stacy[e]
5 Daugherty?

6 A. Those conversations were based on what
7 work she was doing because there were allegations
8 that, even though she was hired to do bookkeeping,
9 that she was not allowed to -- that she told me that
10 she was not allowed to do that bookkeeping, that
11 [former property manager] kept her from doing that, that
12 she wouldn't train her, even though she had information
13 and training on a system of bookkeeping that [former
14 property manager] was using. [Former property manager]
15 wouldn't turn any of the books over to her. She also said
16 that Kevin Zipperle told her there were certain people
17 that she was never to help, there were people that
18 had been labeled as malcontents. He specifically
19 told her not to ever help them.

20 Q. Stacy[e] was [former prop. mgr's] subordinate?

21 A. She was supposed to be her replacement,
22 it was my understanding, and there was supposed to
23 be transitioning.

24 Q. And it was your understanding based upon
25 what?

1 A. What Stacy[e] told me.

2 Q. But at the time she was -- at the time
3 that she would -- that [former property manager] was still
4 employed, she was [former property manager's] subordinate?

5 A. I don't know if you'd call it
6 subordinate or not. I don't know what -- someone
7 was coming in to replace you, if you would call them
8 a subordinate or not.

9 Q. And it's your understanding that she was
10 coming in to replace [former property manager] only from
11 your conversation with Stacy[e], is that correct?

12 A. No. We had other conversations with
13 people on the board, I believe -- I believe, Doug
14 Farnsley. I'm sure that Stacy[e] was there to replace
15 [former property manager].

16 Q. Okay. But at the time [former property manager]
17 was still employed by The Harbours?

18 A. It's my understanding, yes.

19 Q. And when was it in your understanding that
20 [former prop. manager] left the employment of The Harbours?

21 A. I'm not going to be able to tell you
22 dates of anything. I'm sorry. I'm terrible with
23 dates.

24 Q. Do you have any kind of ballpark idea of
25 when?

1 A. No.

2 Q. What was the nature of -- because there
3 are allegations with regard to -- well, I'll come
4 back to that in a second.

5 As we sit here today -- this complaint
6 was filed back in August of 2012. And based upon
7 complaints -- consumer complaints that were received
8 by the AG's Office, has the AG's Office continued to
9 receive consumer complaints with regard to the board
10 at The Harbours?

11 A. Since those in 2010, I think we have
12 received one or two.

13 Q. I'm not sure if we received those
14 because they were part of the discovery requests.
15 So if you could look back at your records and see if
16 we've received them, I would appreciate it getting
17 those.

18 A. Yes, definitely.

19 Q. With regard to --

20 MS. BELLER: Would you mark that piece
21 of the record there and make a note on that that we
22 have an action to do.

23 ^ (Record marked.)

24 Q. (BY MR. CULOTTA:) With regard to the
25 complaint, there are several allegations regarding

1 Mr. Zipperle regarding fraud. Okay? And I'm kind
2 of going to go through them and then ask you
3 regarding each of those.

4 Diverting opportunity of the HOA to
5 purchase Number 312, Unit 312. What information do
6 you have -- or knowledge do you have with regard to
7 that particular allegation that would be supportive
8 of that allegation?

9 A. Of the allegation of --

10 Q. That Kevin Zipperle diverted the
11 opportunity of the HOA to be able to purchase
12 Unit 312?

13 A. One of the biggest pieces of evidence is
14 that key -- well, I wouldn't call it evidence, I
15 don't know how I would describe that knowledge that
16 said when presented to homeowners at a meeting, a
17 lot of them had already left and a lot of them who
18 had stayed had -- they had knowledge of that, that
19 it was going to be presented to them. And so there
20 weren't very many people. Few had the opportunity
21 to vote on that.

22 Q. And that's your speculation, correct?

23 A. It's not --

24 Q. I mean, you weren't there?

25 A. No, but I'm going by what several people

1 have stated.

2 Q. So that I can get an understanding here,
3 you weren't present at the meeting, correct?

4 A. Of course not.

5 Q. Okay. And the discussions that you had
6 with people were with people who don't care for
7 Kevin Zipperle, let's put it that way, is that
8 correct?

9 A. I'm trying to remember exactly where we
10 got that information, but if I had to eventually
11 guess, I would say yes.

12 Q. Okay. And --

13 A. Does Kevin Zipperle deny that, by the
14 way?

15 Q. I'm not answering questions, I'm asking.

16 A. Oh, okay. Sorry.

17 Q. But the question is that there was a
18 meeting that some people left and a vote was taken,
19 is that correct?

20 A. Yes. And I believe that this discussion
21 was scheduled two or three previous -- from records
22 that we have -- meetings and then they were tabled
23 for different reasons. So --

24 Q. And this is your belief as to the
25 evidence of fraud?

1 A. I have not made a conclusion of that,
2 that it's a fraud. Jenny Beller made that
3 conclusion. I've not been to law school. I can't
4 do a legal analysis.

5 Q. With regard to the second allegation
6 that he precluded the flow of information with
7 Bulletin 1 and 2, and that was something that was
8 attached and -- what is your understanding of what
9 these Bulletins 1 and 2 refer to?

10 A. You have to refresh my memory and read
11 them to me.

12 Q. Let me ask you this, prior to coming
13 here today, did you review any information to
14 prepare for this deposition?

15 A. I have very little time, but I did
16 review -- I started reviewing some e-mails that I
17 had received back in 2010. And I didn't get --

18 Q. Okay.

19 A. I have 90 other cases at this point that
20 I'm working on so --

21 Q. Which e-mails -- what e-mails did you
22 review?

23 A. E-mails from complainants that came in
24 in early part of our investigation. I only got to
25 review for about an hour and a half, so very few.

1 Q. Do you recall who those complainants
2 were?

3 A. Sheila Redder, Betty Cantrell. I'm
4 trying to remember. Tom Pike. That's all I can
5 remember because, as I said, I only had about an
6 hour and a half.

7 Q. Okay. Let's go off for two seconds.
8 Let me just look at this.

9

10

* * *

11

(Off the record.)

12

* * *

13

14

CONTINUED EXAMINATION

15 Q. (BY MR. CULOTTA:) Okay. We can go back
16 on the record.

17 Generally -- you'd have to look back
18 through here, but generally, the Bulletins 1 and 2
19 dealt with parking spaces, the acquisition of
20 parking spaces by Kevin Zipperle and then also the
21 developer -- an issue with regard to the developer
22 in balcony repairs and funds for the balcony.

23 Do you recall? Does that help?

24 A. Yes, yes.

25 Q. Okay. What was your understanding with

1 regard to those bulletins and the nature of them and
2 the purpose for them?

3 A. From e-mails I've read -- and I believe
4 those e-mails were from Kevin Zipperle -- that they
5 need to be written to manage questions that would
6 come in regarding those issues, that they wanted to
7 have an official bulletin available to people who
8 had questions about those issues.

9 Q. Is it your understanding that there had
10 been multiple questions asked about those two
11 issues?

12 A. Just from Kevin's e-mails, one would
13 probably have that impression. So, and he felt that
14 [former property manager] had a response.

15 Q. And would it be reasonable and
16 appropriate to -- as opposed to answering the same
17 question over and over, to simply have more or less
18 a position paper or bulletin that you can simply
19 provide someone with those answers?

20 A. I don't know. I've never seen that
21 happen before.

22 Q. Would it be unreasonable, would you say?

23 A. I couldn't say if that was reasonable or
24 not. It would depend on the circumstances, and I
25 don't know what his motive.

1 Q. Was it something that the board decided
2 was an appropriate thing to do, or was it something
3 that Kevin did on his own?

4 A. It was my understanding that he wrote
5 those with the help of [former property manager] and that
6 he then sent them to the board for approval. That is
7 how I remember reading it.

8 Q. Did the board direct him to prepare
9 those, do you know?

10 A. That's -- if they did, I have no
11 knowledge of that. It's not the way that I
12 understood it.

13 Q. If that was, in fact, the case though --

14 A. That I remember, as I recall, in his
15 e-mail, saying, you know, I think it's
16 appropriate -- that it was his decision, that he
17 felt it was appropriate. "Here guys, what do you
18 think about this? About us" -- "this is the way to
19 manage questions that come in."

20 Q. And was that before or -- to the best of
21 your knowledge, was it before or after the bulletin
22 was prepared?

23 A. What was before or after?

24 Q. The conversation or the e-mail
25 discussion that Kevin would have had with the board?

1 A. It's my belief that he wrote it and then
2 submitted it to them for approval.

3 Q. And what would be -- what information do
4 you have that suggests that there is a basis for
5 fraud with regard to either one of those two?

6 A. I have not made a legal conclusion that
7 there was fraud.

8 Q. As an investigator do you have the
9 ability to initiate -- let me rephrase that.

10 When you're dealing with criminal
11 investigations of police, typically, the police will
12 do an investigation and then present it to the
13 prosecutor for consideration and acceptance.

14 In the situation with the AG's Office,
15 how does the information flow? Is it --

16 A. It depends on a case. On some cases the
17 flow is dependent on my -- I'm not sure how to say
18 this -- common-sense approach to what questions
19 should you ask. Some cases are more involved.

20 In this case there were issues -- Jenny
21 stated that there were possible questions regarding
22 Home Loan Practices Act, and so she directed the
23 entire case. Whatever I did, I did only at her
24 direction. She said get this information, I took
25 whatever steps she told me to take to get that

1 information. If she said send a subpoena, I sent
2 the subpoena. I did not do an independent
3 investigation in this case because it was somewhat
4 new territory, and Jenny wanted to make sure that
5 everything was done correctly. And she wanted to
6 lead it, and she did.

7 Q. Did -- in your position as an
8 investigator -- you've been with the AG's Office for
9 eight years. Have you ever had any kind of
10 continuing education with regard to investigatory
11 practices or anything along those lines?

12 A. Constant continuing education with the
13 FBI, Prosecutor's Office, white collar crime,
14 appraisal fraud, all types of fraud classes. I've
15 had numerous, numerous classes on that type of
16 thing.

17 Q. So based upon all of your continuing
18 education with FBI and the Prosecutor's Office and
19 so forth with regard to fraud, what would be, then,
20 your opinion with regard to whether or not -- in
21 your review of those bulletins, whether or not there
22 was anything fraudulent with regard to those?

23 A. I did not make an opinion on that.
24 Jenny Beller --

25 Q. I'm asking you to.

1 A. You're asking me to?

2 Q. Uh-huh.

3 A. I would have to sit down and review
4 them, go over, and go over five years worth of
5 evidence before I could do that.

6 Q. Well, based upon your involvement in
7 this case for the last five years and your knowledge
8 of the facts that they made their way into this
9 complaint --

10 A. Which I did not write by the way or had
11 any contribution --

12 Q. I understand that. I understand that.

13 But you've indicated that you have had
14 education, continuing education with respect to
15 fraud investigations and fraud -- well, fraud
16 investigations and how to, I guess, identify it.
17 And I'm just simply trying to understand or get your
18 opinion as to whether or not you believe, in your
19 professional opinion, whether or not those bulletins
20 were fraudulent, based upon the information you
21 know, and based upon the --

22 A. Fraudulent in which way?

23 Q. In any way.

24 A. I don't have an opinion.

25 Q. I'm asking you for one.

1 A. Well, I can't give you one.

2 Q. Why not?

3 A. Because I would have to sit down, reread
4 them, discuss them with someone who's been to
5 college for law, someone who has a law degree. And
6 then I would, with their assistance, would be able
7 to form an opinion.

8 Q. But you've indicated to me that you have
9 received continuing education from the FBI and the
10 Prosecutor's Office --

11 A. Yes.

12 Q. -- and others that you mentioned with
13 regard to fraud and fraud investigations, is that
14 correct?

15 A. Yes. None of that involved a homeowners
16 association type of fraud actually.

17 Q. So, you're trying --

18 A. That's sort of a new thing.

19 Q. So, you're saying that your training is
20 specialized to the point that it can't be cross --
21 there's no cross-training or are you able to
22 cross-reference?

23 A. I'm answering your original question
24 which is this, I don't have an opinion on it. Is it
25 legally that constitutes -- that calls for a legal

1 conclusion. Fraud is a legal term. I can't make a
2 legal determination, nor would I want to.

3 Q. But I'm asking you based upon all of
4 your training and experience, which you say you
5 have, whether or not those items constitute
6 fraudulent -- are fraudulent in any way?

7 A. I think I answered that question.

8 Q. Well, let me go back --

9 A. I can't form an opinion --

10 Q. Let me go back to --

11 A. -- at this time.

12 Q. Let me go back to three --

13 A. If you give me additional time, several
14 weeks or months, and I sit down and was educated on
15 what constitutes a legal fraud, then possibly I
16 could.

17 Q. So the training that you've had
18 doesn't -- well, let me ask you this, the training
19 that you had with the FBI and the Prosecutor's
20 Office, what sort of training was that?

21 A. White collar crime, mortgage fraud,
22 mainly more just fraud.

23 Q. So going back, then, to --

24 A. Real estate fraud, appraiser fraud.

25 Q. Okay. With regard, then, to Unit 312,

1 is there any bit of your fraud training that would
2 allow you the ability to be able to make an
3 assessment of whether or not it was fraud in that
4 particular transaction?

5 A. I would not and could not make an
6 assessment of fraud. There would be no need for me
7 to.

8 Q. Why not?

9 A. Because I have someone who can make that
10 assessment, someone with the legal background.

11 Q. Let me ask you this, with regard to
12 another allegation of fraud regarding the control of
13 parking -- the price of parking spaces, how did that
14 particular allegation come about?

15 A. Someone complained that there was what
16 appeared to be attempted price fixing as far as the
17 parking spaces were concerned.

18 Q. And who made that allegation?

19 A. I'm not positive that my -- I believe it
20 was Betty Cantrell.

21 Q. And what evidence did either she provide
22 to you or did you identify on your own?

23 A. She sent me an e-mail and said she'd
24 received from Kevin.

25 Q. And based upon those e-mails, do you

1 have any -- do you have any personal feeling with
2 regard to whether or not there was price fixing?

3 A. Just from a layman's perspective, it
4 would be hard to see that -- it would be hard to say
5 that there wasn't. In price fixing, if you wanted
6 your parking spot to be on that list, you could --
7 you could price it at any price you wanted. But if
8 it wasn't within this realm of the formula, then it
9 wasn't going to be on the list, The Harbours list.

10 Q. No one was told that they could not sell
11 a parking space for any price that they chose,
12 correct?

13 A. That's my understanding.

14 Q. And the particular list you're referring
15 to, what list is this?

16 A. A list of parking spots available on The
17 Harbours web site.

18 Q. And what sort of price -- define for me
19 what you understand price fixing to be.

20 A. A price that someone has determined has
21 to be for that particular sellable item.

22 Q. And with regard to that particular list,
23 who was in control of that list is your
24 understanding?

25 A. Kevin.

1 Q. Was he exclusively in control, or was
2 this a board-controlled web site?

3 A. I don't know. I only saw an e-mail from
4 Kevin where he said this is the way it is. I don't
5 know what the board's opinion was on it.

6 Q. And what is your understanding with
7 respect to other avenues for being able to sell your
8 parking spot?

9 A. Any avenue other than having it on that
10 list for The Harbours web site.

11 Q. Let me move on for a second to something
12 else here. There's another allegation of cause of
13 construction of a substandard wall between 1103 and
14 1104.

15 Are you familiar with that allegation?

16 A. Yes, yes.

17 Q. What evidence did you acquire that
18 suggests that Kevin Zipperle constructed that wall
19 or caused it to be built?

20 A. There were two or three things, but the
21 one I can remember is Kathy Bupp recalling a
22 conversation she had with Sharon Chandler where
23 Sharon allegedly said, "I don't know why Kevin is
24 not taking that wall down."

25 Q. This is a third-hand conversation that

1 you're relying upon for that information?

2 A. I didn't rely upon that information.

3 Q. Let me ask you this, you sat in on the
4 depositions of both Frank Prell and Kevin Zipperle,
5 correct?

6 A. Yes.

7 Q. Okay. And Kevin testified under oath
8 that he had no involvement in that, the construction
9 of that wall, correct?

10 A. That is correct.

11 Q. And Frank Prell testified under oath
12 that his brother was the one that built that wall,
13 is that correct?

14 A. I believe I thought Frank said that he
15 thought it was his brother. He wasn't sure, but he
16 thought it was. But I don't have those notes in
17 front of me, so I --

18 Q. I understand, neither do I.

19 And Frank testified also that he never
20 asked permission from the board to be able to build
21 that wall, is that correct?

22 A. I believe that's what he said.

23 Q. So the only -- the only potential
24 evidence that the AG's Office has with regard to
25 Kevin Zipperle's involvement in the construction of

1 that wall is the third-hand conversation between
2 Kathy Bupp and Sharon Chandler?

3 A. I don't know that for sure. There could
4 be other. I just don't recall what it is.

5 Q. As an investigator --

6 A. If you remember, I have 90 other cases I
7 work on.

8 Q. I understand. But as far as this one is
9 concerned, do you have any other knowledge of any
10 evidence that you, as the investigator on this
11 case -- well, let me ask you this, are there any
12 other investigators assigned to this case?

13 A. No.

14 Q. So as the investigator on this case, to
15 your knowledge, is there any other evidence?

16 A. I don't recall.

17 Q. Do you have any reason to believe that
18 Kevin would have lied under oath that he was not
19 involved in the construction of that wall?

20 A. How could you -- I don't understand that
21 question. How could you have -- oh, are you asking
22 if I have evidence that he --

23 Q. Do you have reason to believe that Kevin
24 lied while under oath that he had no involvement in
25 the construction of that wall?

1 A. I couldn't tell you why Kevin would say
2 or do anything.

3 Q. Do you have any reason to believe that
4 Frank Prell would have lied under oath that --

5 A. Do I have a direct knowledge that Frank
6 lied under oath or -- what is -- I'm not -- I'm not
7 getting your question.

8 Q. Well, both Frank and Kevin have stated
9 that Kevin had no involvement in construction of
10 that wall. Would either of them -- would you have
11 any reason to believe that both of them would be
12 lying?

13 A. It's like asking that I believe -- if I
14 believe that people lie.

15 Q. It's a yes or no question?

16 A. No, it isn't.

17 Q. Yes, it is.

18 A. No, it isn't.

19 Q. I'm only asking for you --

20 A. Do I have --

21 Q. -- for a yes or no answer?

22 A. Do you have a reason to believe? You
23 mean do I have knowledge that they would have lied.

24 Q. I'm --

25 A. I believe when people are accused of

1 things, they often lie under oath. Does that -- is
2 that responsive?

3 Q. Not really.

4 A. Okay.

5 Q. Well, Frank was asked a specific
6 question of whether or not Kevin had any involvement
7 in the construction of that wall, and Frank's
8 response was no. Frank is not being accused.

9 Would Frank have any reason to lie about
10 Kevin's involvement in the construction of that
11 wall?

12 A. I don't know that, but sometimes people
13 lie because they're afraid that -- of further things
14 that will come out. And then if they weren't --
15 that what they had said may incriminate them.
16 People do lie for that reason. Do I have direct
17 knowledge of that with either one of them, no.

18 Q. What evidence does the AG's Office have
19 that Kevin in this situation, as well as Mary Lou or
20 Sharon, permitted the construction of the wall to be
21 erected between 1103 and 1104?

22 A. They are on the board, and they didn't
23 stop it. That would be something that the board, in
24 my thought process, would or should have control of.

25 Q. Frank had said that he never went and

1 requested permission from the board to construct the
2 wall. Do you recall that?

3 A. Yes.

4 Q. Okay. So if Frank didn't go to the
5 board and request the permission, it's an
6 assumption -- you're making an assumption that they
7 knew about the construction of the wall, is that
8 correct?

9 A. I'm not making an assumption. Sharon is
10 a real estate agent and has knowledge of empty
11 condominiums, generally speaking. I would assume
12 that she does.

13 Q. Okay.

14 A. I would --

15 Q. As you just said --

16 A. Mary Lou had an interest in it --

17 Q. -- you're making an assumption.

18 A. Of course.

19 Q. Okay. But you're making an assumption
20 that they had knowledge prior to it being
21 constructed or at the time it was being constructed,
22 is that correct?

23 A. I'm not making -- are you saying am I
24 saying that?

25 Q. Yeah. I mean, it says that they --

1 A. It says they --

2 Q. -- permitted the wall to be constructed.

3 A. I didn't write that.

4 Q. I'm asking you. It's an allegation that
5 went into the complaint that you, as an investigator
6 of this case, have brought against my three clients.
7 And what I'm asking you is, is there any evidence
8 that the Attorney General's Office has that you, as
9 the investigator, may have obtained that --

10 A. I don't have knowledge. And Jenny
11 Beller did some of the investigation, although she
12 is not an investigator, some things that she
13 obtained on her own also. So I don't recall. That
14 doesn't mean there is or there isn't.

15 Q. To your knowledge, is there any
16 information that the Attorney General's Office has
17 that either Kevin Zipperle, Sharon Chandler, or Mary
18 Lou Trautwein-Lamkin permitted -- had knowledge in
19 advance of -- had knowledge in advance of or at the
20 time that the wall was being constructed, and they
21 permitted it to be built?

22 A. I don't recall. That's the honest
23 answer.

24 Q. And you indicated that as board members,
25 they -- it's your opinion that they should have

1 known. Why would then these three individuals be
2 the ones on the board that would have been
3 responsible and not the other, I believe, six?

4 A. That calls for a legal conclusion, and I
5 can't make it.

6 Q. Well, I'm asking you why, in your
7 opinion, would these three individuals be
8 responsible --

9 A. I have no opinion. I have no opinion on
10 that.

11 Q. I'm asking you for your opinion.

12 A. But I don't have mine, so I can't give
13 it to you.

14 Q. So when you're asked to testify at the
15 trial of this matter as to whether or not these
16 individuals were the only individuals that should
17 have had knowledge, your response will be I have no
18 opinion?

19 A. Possibly I'll have an opinion at the
20 time. I don't know. After I review more of the
21 evidence.

22 Q. I'm going to hold open that as well.

23 With regard to -- and I think we've
24 discussed this before -- as far as Kevin is
25 concerned, the instruction of Harbours employees not

1 to provide service to malcontents, and that's the
2 term that's used in the complaint?

3 A. Yes.

4 Q. Other than the plumbing or electrical,
5 and I think we've already discussed a little bit --
6 what was refused to any of these individuals, do you
7 know?

8 A. I don't know.

9 Q. Who told you that services were refused
10 to these individuals?

11 A. Stacy[e] Daugherty.

12 Q. What was the -- what was she told not to
13 do for these people?

14 A. "Help them in any way at all."

15 Q. Is that an exact quote?

16 A. Yes.

17 Q. Did she explain why she was told not to
18 help these people?

19 A. Because Kevin didn't like them.

20 Q. Is that the reason she gave?

21 A. Yes. That Kevin had labeled several of
22 the people at The Harbours that he didn't like as
23 malcontents, that he had let her know who they were,
24 and she was not to help them in any way.

25 Q. With regard to Stacy[e] [former property

1 manager's] vacation time and working hours --

2 A. You mean [former property manager].

3 Q. Excuse me. Thank you.

4 [Former property manager's] vacation time and work
5 hours, there is an allegation of fraud with regard
6 to all three of the defendants in this matter.

7 Well, as to Kevin, Mary Lou, and Sharon.

8 What is the nature of that particular
9 allegation of fraud, as you understand it?

10 A. Did you read it from the complaint?

11 Q. Did I read it?

12 A. Yes.

13 Q. Yeah.

14 A. Does that not say that in there?

15 Q. I'm asking you your understanding
16 what --

17 A. The allegation --

18 Q. -- the allegation of fraud is.

19 A. Is that no one was supervising [former property
20 manager's] time.

21 Q. And you obtained that information
22 according to what?

23 A. According to [former property manager], according
24 to W.T. Roberts.

25 Q. Did [former property manager] tell you that no

1 one was supervising her time?

2 A. Yes.

3 Q. And W.T. told you that no one was
4 supervising her time?

5 A. Yes, he did. He said that sometimes he
6 signed off on her time cards.

7 Q. Was W.T. on the board at the time?

8 A. I'm not sure if he was on the board or
9 if he was just on a committee, but I believe he was
10 on the board.

11 Q. And why then, in your opinion as an
12 investigator on this matter, what was -- well, let
13 me ask you this, with respect to vacation time and
14 the work time, was there -- you indicated that [former
15 property manager] brought stuff to a meeting you had. What
16 sort of information did she bring?

17 A. I believe she -- I thought we had asked
18 her to bring the computer, but she didn't.
19 Actually, I think we had asked her to bring a
20 recollection or recount of what hours she had worked
21 since she left and was working from home. I don't
22 think she brought that either.

23 Q. So as you sit here today, your
24 recollection is that you've never seen any kind of
25 time cards or anything from [former property manager] or

1 any kind of accounting of her time?

2 A. From her?

3 Q. Yes.

4 A. We have not received that from her that
5 I recall.

6 Q. Is there -- has there been any kind of
7 investigation or inquiry with regard -- or
8 assessment of her time in conjunction with the work
9 that she provided to The Harbours?

10 A. That would be impossible since a lot of
11 the work she said she was doing she said she was
12 doing at home and that she would sometime just send
13 her time sheets through after three weeks. So there
14 was no -- as her own words, there was no one
15 supervising her -- her time.

16 Q. Is there any reason to believe that
17 [former property manager] did not perform that she on her
18 time sheets indicated that she performed?

19 A. No more than there was reason to believe
20 that she did.

21 Q. Well, let me ask you this, the work that
22 was -- was the work that she was doing, was it
23 conducted, was it performed?

24 A. I have no idea.

25 Q. If it was done, is there any reason to

1 believe that her time sheets were doctored or
2 incorrect?

3 A. There would be no way to tell. I think
4 that's the point.

5 Q. If the person was performing the service
6 that they were hired to perform and they were
7 providing you a time sheet and they were a trusted
8 employee, would you have any reason to believe that
9 they were not performing the work in accordance to
10 the way that they document it?

11 A. You said if they were performing the
12 work. I have no idea if she was performing the
13 work.

14 Q. If representatives from The Harbours
15 stated that everything that she identified on her
16 time sheets was performed, was provided back to The
17 Harbours, would you have any reason to doubt that?

18 A. She didn't put on a time sheet what she
19 was doing, just hours.

20 Q. I thought you said you hadn't seen --

21 A. I didn't say that. I said I didn't get
22 anything from her.

23 Q. With respect to the -- well, let me ask
24 you this. What were the duties you understand that
25 she was to performing for The Harbours?

1 A. I have no idea other than bookkeeping.
2 I know that she -- just from things I've seen, that
3 there was a whole huge variety of things that she
4 did.

5 Q. So if individuals from The Harbours
6 testified that [former property manager] performed the
7 services, that services that she was tasked to
8 perform, in fact, were completed as requested, would
9 you have any reason to doubt that?

10 A. Would I have any reason to doubt people
11 who testify to things?

12 Q. You testified that [former property manager]
13 performed the tasks that she was --

14 A. It would depend on who was testifying, I
15 guess.

16 Q. So let me ask you this, if Betty
17 Cantrell said that [former property manager] didn't do the
18 work that she was requested to perform --

19 A. I would say what work was she --

20 Q. Bookkeeping and the other multiple
21 tasks.

22 A. I would say how do you know that, and
23 there'd be an investigation.

24 Q. And let me ask you then, if --

25 A. I don't think I've said that she wasn't

1 doing who she was supposed to be doing. I'm saying
2 that she was unsupervised, that her time was not
3 supervised. Maybe she was tasked to do bookkeeping,
4 and it took her an hour, but she put down three
5 hours. There'd be no way to tell that.

6 Q. And if you had -- put it in this realm.
7 If you had a trusted employee that had never given
8 you any reason to believe that they would provide
9 you with a fraudulent time sheet, would you have any
10 reason to doubt that the time that they provided was
11 not accurate?

12 A. I think it's always good to have checks
13 and balances.

14 Q. I'm not asking about that.

15 A. But I was further elaborating that you
16 categorized her as a trusted employee. I would say
17 who decided -- how did you make that designation?

18 Q. I'm simply saying if the board
19 considered her to be a trusted employee.

20 A. And if the board is under suspicion,
21 which happens there.

22 Q. Okay. You got three individuals that
23 have been sued in this matter, one of whom you
24 indicated W.T.

25 A. Now, he's not being sued.

1 Q. I know he's not.

2 A. You said three people, one of them being
3 W.T.

4 Q. No, no. I'm sorry, then I misspoke.
5 Three people who are being sued and an
6 additional person W.T. who you said you spoke to,
7 who just simply signed off without any supervision,
8 and then there are other obvious individuals on the
9 board.

10 So, was the whole board under suspicion?

11 A. I have no idea who is under suspicion.
12 I did not make that conclusion. Jenny Beller did.

13 Q. You're the investigator.

14 A. I gathered information.

15 Q. From 2010?

16 A. Yes, and I gathered all the
17 information --

18 Q. Did you --

19 A. -- that I was told to gather.

20 Q. Did you gather any information with
21 regard to any of the other board members?

22 A. There were no allegations against the
23 other board members, so there would be no reason to.

24 Q. When you met with W.T. and he told you
25 that he did not supervise [former property manager] but

1 signed off on her time sheets, did that give you any reason
2 for suspicion?

3 A. I felt that there was -- I thought like
4 he just didn't know what he was doing.

5 Q. So you gave him a pass?

6 A. He seemed like an old man who had no
7 idea what he was doing.

8 Q. So you've given him a pass?

9 A. I didn't give him anything. I didn't
10 give him a pass. I didn't accuse him. That's not
11 my position to do.

12 Q. What would be the basis for --

13 A. I would give that information to Jenny
14 Beller, and I would let her form that opinion.

15 Q. Why would Kevin Zipperle be -- what
16 was -- what would be his responsibility for [former
17 property manager's] vacation and work time?

18 A. I have no idea.

19 Q. Why would he then be held responsible
20 for her?

21 A. That you have to ask Jenny Beller. She
22 made that decision, not me.

23 Q. What investigation did you do with regard
24 to [former property manager's] vacation and work time?

25 A. Well, we subpoenaed her --

1 Q. You.

2 A. Okay. At the request of Jenny Beller, I
3 subpoenaed her time sheets from ADP.

4 Q. Okay.

5 A. I gave this to Jenny Beller.

6 Q. Okay. Did you get any information
7 directly from [former property manager]?

8 A. Yes. She said no one was supervising
9 her.

10 Q. Other than her verbal discussion, did
11 she provide you with any other documentation?

12 A. She may have, but I don't recall that.

13 Q. What involvement would -- or what reason
14 would you consider that Mary Lou or Sharon were any
15 more responsible for [former property manager] than W.T. or
16 any other board members?

17 A. I didn't make an opinion on that or
18 conclude anything.

19 Q. As an investigator who has had fraud
20 training, would you need to go back and review
21 something as to why she was -- those three
22 individuals were singled out?

23 A. No. I could tell you right now.

24 Q. Why?

25 A. Jenny Beller made that decision. She

1 decided that those three had culpability for
2 whatever legal reasons she came up with.

3 Q. Let me ask you this.

4 MR. CULOTTA: Well, let me see. We've
5 been going for about an hour and a half. Does
6 anybody need a break or anything?

7 THE WITNESS: No.

8 MS. BELLER: We're okay.

9 MR. CULOTTA: We're good?

10 Q. (BY MR. CULOTTA:) What was your
11 first -- or who did you first -- who first brought
12 the condo sale of 1103, 1104 to your attention?

13 A. I'd have to think about it for a minute.

14 Q. Take your time.

15 A. I think several people did.

16 Q. Who's that?

17 A. I think Kathy Bupp.

18 Q. Let's take them one at a time. What did
19 Kathy Bupp tell you about?

20 A. That she was -- that she was interested
21 in 1103 and 1104. That she had briefly talked to
22 Kevin who told her he was going to buy them and that
23 he would sell them to her after he bought them, and
24 he would still be making a little profit.

25 Q. Is this before or after the units were

1 sold?

2 A. I'm not sure of the time. It was around
3 that time, either before or after, but I can't
4 recall the time frame.

5 Q. I guess, my question is, why would she
6 be sharing information with you regarding her
7 interest in buying these two condominiums?

8 A. Why would she share that information?

9 Q. Uh-huh.

10 A. You'd have to ask her. I have no idea.

11 Q. Well, I mean, what would be the logical
12 reason why she would talk to you about her interest
13 in these two condominiums afterwards?

14 A. She thought there might be something
15 suspicious. I guess, she just warned our office of
16 that, that something was going on. She didn't know
17 what maybe. I don't -- I'm just speculating.
18 That's pure speculation because I really don't know
19 why people tell us things.

20 Q. Did you talk to Kathy Bupp frequently?

21 A. No.

22 Q. Did you e-mail her frequently?

23 A. No.

24 Q. How often did you -- how frequently or
25 how often did you get e-mails from Kathy Bupp?

1 A. I would say at five-year period less
2 than ten. That's not exactly. I'm not sure, but
3 that's a guesstimate.

4 Q. When did you first started making
5 inquiry with regard to 1103, 1104?

6 A. Probably about the first time I heard,
7 right after hearing about it.

8 Q. Was that before or after 1103 was sold?

9 A. It was before.

10 Q. Before 1103 was sold?

11 A. Uh-huh. (Witness answers in the
12 affirmative.)

13 Q. And what was the nature of your inquiry?

14 A. What was the nature of our inquiry?

15 Q. Uh-huh.

16 A. Is that one unit, two units? Is it
17 combined unit? Someone told us that there was a
18 wall -- a ridiculous wall, like, between the two of
19 them that they had understood that it was put up to
20 appease the mortgagers on --

21 Q. Who told you that?

22 A. Several people, but I can't remember who
23 all they were.

24 Q. What was the -- what interest would or
25 should the AG's Office have in that particular --

1 whether or not it was combined or not combined, or
2 the sale of the unit in general?

3 A. I guess, the people who were letting us
4 know what's going on were suspicious of Kevin trying
5 to do something that -- the general impression of
6 Kevin by these people was that he's always trying to
7 do something underhanded.

8 Q. So every time Kevin says or does
9 anything, they always assume that there's something
10 shady?

11 A. I think with past experience -- they've
12 had personal experiences. They believed they had a
13 lot of reason.

14 Q. That's not my question. My question is
15 this, any time Kevin does anything, these people
16 assume that there's something shady --

17 A. I have no idea what they assume.

18 Q. -- or improper?

19 A. I have no idea what they assume.

20 Q. But you did a second ago say that --

21 A. I say I'm assuming that that's what they
22 thought, but I could be wrong, of course.

23 Q. Who else contacted you regarding the
24 sale of 1103, 1104?

25 A. I would have to guess and since these

1 are guesses, I don't think it --

2 Q. I'd be more than happy for you to guess.

3 A. Will you qualify that as a guess?

4 Q. I'll qualify that as a guess.

5 A. Okay. I would guess Sheila Redder.

6 Q. If you had to try to remember, what was
7 the nature of discussion you had with Sheila Redder
8 regarding --

9 A. I didn't have a discussion regarding
10 1103, 1104, but she may or may not have said, "Hey,
11 I think Kevin has something going on with 1103,
12 1104." That may or may not have happened.

13 Q. In your investigation of that particular
14 sale, did you make any inquiry to Frank who owned
15 them, who owned these two units?

16 A. It seems like I did, but I'm not -- I
17 don't directly recall, I don't. I don't recall
18 Frank being easily reachable. So, I know I made an
19 attempt. Whether I did or not, I wouldn't say
20 positively.

21 Q. What would have been the reason for
22 trying to get in touch with Frank?

23 A. To ask him if he knew why there was a
24 wall between the two condos.

25 Q. And you testified just a moment ago that

1 you were told that it was constructed to appease a
2 lender, is that correct?

3 A. That was my understanding. I don't know
4 that for sure.

5 Q. Do you have any reason to dispute that
6 to be true?

7 A. No.

8 Q. And who do you -- do you have any idea
9 as to who may have requested that the wall be
10 constructed?

11 A. I don't have direct knowledge of that.

12 Q. When did you -- because I know you've
13 been up there -- when did you go and inspect 1103
14 and/or 1104?

15 A. Sometime after I'd heard about it and
16 sometime before it's sold, so whatever time that
17 was.

18 Q. Before 1104 sold or before both of them
19 sold?

20 A. Before both of them sold.

21 Q. And who --

22 A. I'm not positive. I'm not positive if
23 one had sold. I know the one didn't, but I wasn't
24 positive at that point.

25 Q. Who let you into the units?

1 A. Listing agent Diana Mayfield.

2 Q. Did you have any discussions with her
3 regarding those two units?

4 A. There was some discussions, yes.

5 Q. What was the nature of those
6 discussions?

7 A. How ridiculous the wall looked, how it
8 divided a sink, how subpar it was, how it looked
9 suspicious.

10 Q. And when you say looked suspicious, what
11 do you mean?

12 A. Why would there be a wall in the middle
13 of a sink. That would make anyone suspicious.

14 Q. At that point in time, were you already
15 notified or apprised of the fact that the -- that
16 the lender had required the wall be constructed?

17 A. I don't think so. I don't think it was
18 right at that time. I think we gained knowledge of
19 that immediately afterward.

20 Q. Did you ever contact the lender, or did
21 anyone that you know of from the Attorney General's
22 Office ever contact the lender to corroborate that
23 explanation?

24 A. I'm not positive of that, but as I said
25 previously, I believe one of our Bank of America --

1 our loan servicing people may have called Bank of
2 America, but I'm not positive. That's the
3 recollection I have of the conversation, but I am
4 not 100 percent sure.

5 Q. Is there anything in the Attorney
6 General's investigative file that would suggest that
7 that was not the reason why it was constructed?

8 A. I'm not sure what your question is.

9 Q. In other words, is there any reason for
10 the Attorney General's Office to dispute that that
11 was the basis and reason for its construction?

12 A. No, not to my knowledge.

13 Q. Is there any idea, to your knowledge --
14 sorry.

15 And to your recollection, you had no
16 contact with Frank regarding those units?

17 A. I can't exactly recall because I recall
18 attempting to contact him and having a hard time.
19 So I don't recall if I ever actually reached him.

20 Q. The complaint states that -- let's just
21 go to what that -- well, let me also ask you this
22 too, you indicated earlier that you did not have any
23 contact or have no recollection of any contact with
24 Fannie Mae with regard to those units as well, is
25 that correct?

1 A. I believe there was contact with Fannie
2 Mae. I just don't recall if I contacted them or if
3 Jenny Beller did. We were working together, and
4 sometimes she did something, and sometimes I did
5 some things. So I can't recall which one of us
6 contacted them, but I believe they were contacted.

7 Q. Do you recall or does the AG's
8 investigative file contain any information regarding
9 this wall -- from any communications with Fannie Mae
10 regarding this wall?

11 A. I don't know. I haven't seen the entire
12 file. There's, like, six big boxes full of it.

13 Q. Because the complaint alleges that Kevin
14 Zipperle committed deceptive acts by erecting the
15 wall. And I'm trying to figure -- let me ask you
16 this, from your -- how would you define deceptive
17 act?

18 A. I wouldn't. That's a legal term, and I
19 wouldn't define it.

20 Q. Okay. From a layman's perspective, what
21 does that mean to you?

22 A. From a layman's perspective?

23 Q. Uh-huh.

24 A. Something that was meant to deceive.

25 MS. BELLER: May I interject something

1 here?

2 MR. CULOTTA: Sure.

3 MS. BELLER: I believe that the
4 allegation has been mis-categorized and that's why
5 she can't answer that question.

6 MR. CULOTTA: Okay.

7 MS. BELLER: The allegation I do not
8 believe is that he is being charged for having
9 erected -- that that's the deceptive act with regard
10 to this. I don't believe that's the case. It's
11 allowing the wall to be erected.

12 Q. (BY MR. CULOTTA:) Paragraph 257 on
13 Page 36 of the complaint says, "By erecting a
14 substandard wall to divide Numbers 1103 and 1104,
15 Zipperle committed deceptive act in violation of the
16 Indiana Code."

17 So from a layman's perspective, I think
18 you've given the definition of what that is.

19 MS. BELLER: And is this the Indiana
20 Code 24-9?

21 MR. CULOTTA: 24-9-3-7.

22 MS. BELLER: Okay. That's the Home Loan
23 Practices Act for clarification.

24 MR. CULOTTA: Okay.

25 Q. (BY MR. CULOTTA:) Are you familiar with

1 that act?

2 A. I have read it before, yes.

3 Q. Okay. What is your understanding of
4 what that act provides?

5 A. I don't have an understanding of that.
6 It's been a while since I've read it.

7 Q. We can take a break in a little bit, and
8 I'll pull it up and ask you to give me your layman's
9 opinion on what that means.

10 With respect to --

11 A. Can I ask for a clarification on that.
12 Since I'm not a layman, why would you be asking
13 that?

14 Q. Well, how would you classify yourself?
15 You're not attorney, obviously, from that
16 perspective --

17 A. Investigator.

18 Q. Okay. And you've had fraud training,
19 correct?

20 A. Mortgage fraud training.

21 Q. Okay. Any other form of fraud training?

22 A. Appraiser training.

23 Q. Okay.

24 A. Real estate training.

25 Q. Okay. Does -- and we'll go over it.

1 Does this -- does the Home Loan Practices Act fall
2 into that category -- in any of your training?

3 A. Sometimes, sometimes.

4 Q. Okay. Then I will ask you from your
5 expert opinion on that -- what those, then, mean.
6 And I'll pull that in a moment, and we'll go through
7 it then.

8 If Mr. Zipperle did not have any
9 involvement in erecting the wall, then that
10 particular allegation -- would you agree that that
11 particular allegation would be without merit?

12 A. I don't have an opinion on that. I
13 think the wording may be a little off, and so you're
14 playing on that and --

15 Q. No, no. I just read it. Paragraph 257
16 on Page 36 of the complaint states, quote, By
17 erecting a substandard wall to divide Numbers 1103
18 and 1104, Zipperle committed a deceptive act in
19 violation of Indiana Code, Section 24-9-3-7, period,
20 end quote.

21 So my question was, if Mr. Zipperle had
22 no involvement in the construction of that wall,
23 would that particular allegation have any merit?

24 A. I don't know. That seems to call for --
25 that's a legal document.

1 Q. I'm asking you in your professional
2 opinion as an investigator?

3 A. There may be more to that that I don't
4 understand, so I couldn't form an opinion on that.

5 MS. BELLER: Can I interject on this.

6 MR. CULOTTA: Yes -- well, let's take a
7 quick break.

8 THE WITNESS: I have to go to the
9 ladies' room anyway.

10 MS. BELLER: Okay.

11

12 * * *
13 (Recess taken.)

14 * * *

15

16 CONTINUED EXAMINATION

17 Q. (BY MR. CULOTTA:) And while we're
18 taking a break, I'll pulled 24-9-3-7. And it just
19 so happened that 24-9-2-7 was right next to it,
20 which is the definition of deceptive act.

21 A. I would have to get glasses here.

22 Q. First, take a look at the definition of
23 deceptive act as defined by the State.

24 A. Okay.

25 Q. Okay. And then if you would just take a

1 look at 24-9-3-7 which is the --

2 MS. BELLER: May I see?

3 MR. CULOTTA: Yeah.

4 A. I notice it says deceptive act as far as
5 the mortgage or a real estate transaction. Did you
6 mean it to be that specific?

7 Q. Well, that's the definition as it's
8 defined in --

9 A. Oh, in the --

10 Q. -- in that act.

11 A. Oh, okay.

12 Q. Okay. Are you done with it?

13 A. Yes.

14 Q. Okay. Now, under the definition of
15 deceptive act in 24-9-2-7, it says --

16 A. -3-7?

17 Q. No, -2-7.

18 A. Oh, okay.

19 Q. This one right here.

20 A. Oh, okay. Oh, okay.

21 Q. It says that it's an act or practice of
22 -- as part of a mortgage transaction or real estate
23 transaction defined under 24-9-3-7(b) -- which would
24 have been in there -- which person at the time of
25 the transaction knowingly or intentionally -- and I

1 presume and this consequence to be -- made some
2 material misrepresentation or concealed material
3 information regarding the terms or conditions of the
4 transaction.

5 So my question to you is, in your
6 professional opinion, what is -- who is being
7 deceived under -- as it's being suggested here in
8 paragraph 257 of the complaint when it states "By
9 erecting a substandard wall to divide 1103 and 1104,
10 Zipperle committed a deceptive act in violation of
11 24-9-3-7"?

12 A. Who is being deceived?

13 Q. If he, in fact, had been involved in the
14 construction of that wall, who was being deceived?

15 A. It would be hard to say who is being
16 deceived because it's so obviously not a real law.
17 So, possibly people who were interested in
18 purchasing 1103 and 1104 may have been -- what's the
19 heck.

20 Q. So when you are saying --

21 A. Maybe the bank.

22 Q. But it's your understanding that the
23 wall was constructed at the bank's direction?

24 A. That is my understanding.

25 Q. So the bank wouldn't have been deceived?

1 A. Well, they may have been deceived of
2 what type of wall it is.

3 Q. Was it --

4 A. Or part of the wall.

5 Q. Was it your understanding that they were
6 led to believe that it was a permanent wall?

7 A. I don't know what they were led to
8 believe.

9 Q. Is there any --

10 A. That's possible.

11 Q. Is there any evidence that you are aware
12 of that the bank instructed Frank to construct a
13 permanent wall?

14 A. No.

15 Q. Who would possibly know if someone had
16 spoken to either the bank -- well, let me ask you
17 this, if Kevin had no involvement in the
18 construction of that wall, based upon the definition
19 as you've read it here and the statute that's been
20 cited here, could he have engaged in a deceptive
21 act?

22 A. If he had directed the wall -- if he had
23 someone else do it.

24 Q. As you understand it though, the wall
25 was constructed at the bank's direction?

1 A. That's my understanding.

2 Q. Okay. So, and assuming for the sake of
3 argument that Kevin had no involvement with the
4 construction or the direction of the construction of
5 the wall, could he have engaged in any sort of
6 deceptive act?

7 A. Probably not.

8 Q. If Frank had built it at the direction
9 of the bank, could he have engaged in any sort of
10 deceptive act?

11 A. Based on?

12 Q. Well, based upon the definition and the
13 statute. I mean, as you indicated, it was clearly
14 not a permanent wall. So anyone who was going in
15 there clearly could tell that it was not meant to
16 remain after the units were sold.

17 So could -- if the bank directed the
18 construction of the wall, could Frank have engaged
19 in any sort of a deceptive act?

20 A. The direction of the bank was deceptive.
21 If what -- I don't know, probably not.

22 Q. What about with regard to -- is there
23 anyone other than Frank or Kevin that you're aware
24 of that could testify as to Kevin's involvement in
25 the construction or the direction of the

1 construction of the wall?

2 A. Other than who?

3 Q. Other than Frank or Kevin?

4 A. I was told that Sharon had.

5 Q. Could say that Kevin was -- had

6 knowledge of or constructed the wall?

7 A. Yes, yes.

8 Q. But you had learned that from Kathy

9 Bupp?

10 A. That was Kathy Bupp direction to us,

11 yes.

12 Q. And so the evidence that you have that

13 Kevin had any involvement in the construction of the

14 wall is from your discussions with Kathy Bupp?

15 A. I don't know if we had a discussion, but

16 she may have e-mailed it to us.

17 Q. But any evidence that the AG's Office

18 relies upon that Kevin had involvement in the

19 construction of the wall originates with Kathy Bupp?

20 A. I'm not sure. There may be other things

21 that I'm not aware of.

22 Q. Your only knowledge has come from Kathy

23 Bupp?

24 A. My only recollection. I can't recall

25 anything else. I do recall that. I don't recall

1 anything else. I believe there were other people
2 who e-mailed us, but I can't remember who they were.
3 It would be pure speculation.

4 Q. And I think we've already asked this or
5 have gone over this. But as far as your discussions
6 regarding the wall, you didn't speak to the bank and
7 you didn't speak to Fannie Mae.

8 Was there anyone else that you may
9 have -- any other agency or private entity that you
10 may have talked with?

11 A. Concerning the wall?

12 Q. Concerning the wall and 1103, 1104.

13 A. Diana Mayfield, [former listing agent].

14 Q. And what was the conversation that you
15 had with [former listing agent]?

16 A. What her involvement was with 1103 and
17 1104.

18 Q. And what was that?

19 A. She said she'd previously listed
20 property or properties for Frank, that she had been
21 interested in -- she'd found out somehow about those
22 two and was interested in listing those for him
23 also.

24 Q. No discussions with her regarding the
25 wall that you could recall?

1 A. I believe there was some discussion, but
2 I can't tell you the detail. That she thought that
3 there was something -- she felt that there was
4 something wrong and so -- going on as far as the
5 construction of the wall and what was going on with
6 the two different mortgages. She felt that way so
7 strongly that she said she just gave up the listing.

8 Q. And when did you talk with her?

9 A. Around the time that 1103 and 1104 were
10 for sale.

11 Q. And she gave up the listing because of
12 her concern with the wall?

13 A. That's my recollection. It was not with
14 just the wall. It was with the whole combining and
15 un-combining 1103 and 1104. And there may have been
16 some other concerns that I don't really recall at
17 this moment.

18 Q. Could she have perhaps given up the
19 listing because she let her Indiana license lapse
20 and had no, then, legal right to be able to sell
21 real estate?

22 A. You're asking me if that's why she did
23 it. I have no idea why she did. I can only tell
24 you why she told me that she did it.

25 Q. Based upon your understanding that Frank

1 constructed the wall at the direction of the bank
2 and having no reason to dispute that, what interest
3 would the AG's Office have in investigation into
4 1103 and 1104?

5 A. AG's Office is conducting an
6 investigation against certain entities, and then
7 more information comes and more information comes.
8 It would be a dereliction of duty not to follow up
9 on everything that people say. You see if there's
10 something you don't know yet what might be there.
11 So of course, you would follow every lead that you
12 get.

13 Q. Okay. And if the bank -- if it was the
14 understanding of the AG's Office that the bank
15 directed Frank to construct the wall, and we already
16 determined that, I think you testified that if the
17 bank directed him to construct the wall, then they
18 would not be deceived by it nor would anyone who --

19 A. I don't -- I don't --

20 MS. BELLER: I'm going to object to the
21 characterization of it being the understanding of
22 the OAG. It needs to be in Sally's understanding
23 because she cannot speak for the entire OAG.

24 MR. CULOTTA: Okay.

25 Q. (BY MR. CULOTTA:) Your understanding

1 was that the wall was constructed at the direction
2 of the bank. You were told that.

3 A. I believe that's just a recent thing,
4 probably when Frank Prell was supposed to be
5 interviewed.

6 Q. So that's not information that you knew
7 or -- it was not your understanding way back when?

8 A. No, it was not.

9 Q. But as you cite here today, as you
10 indicated, if that was in fact the direction -- or
11 that he was in fact doing that at the direction of
12 the bank?

13 A. Yes, it was --

14 Q. If he was doing that at the direction of
15 the bank, then there would not have been a deceptive
16 act against the bank for having constructed the
17 wall?

18 A. Yes.

19 Q. That's what I said.

20 A. Yeah. Then probably not.

21 Q. Okay. And as you indicated -- and we've
22 seen pictures of the wall -- clearly, no one who
23 walks in there is going to be deceived that there's
24 something about the two units -- I mean, they could
25 not be deceived that that was a combined unit?

1 A. I think they can be deceived about the
2 reason for the wall. And it was my understanding
3 the wall was not directly placed to where the
4 division of the two units should have been. There
5 was, like, three feet off or something.

6 Q. Based upon what information?

7 A. Based on information -- I'm not sure,
8 but I believe it came from Diana Mayfield.

9 Q. And Frank testified that it was exactly
10 where it was supposed to be.

11 A. I can't recall his --

12 Q. If he did --

13 A. If he did, he did.

14 Q. But the question -- okay. Let me go
15 back to, then, the question with regard to
16 prospective purchasers. What would be -- what would
17 be deceptive about their -- would they have any
18 reason to know what the purpose of the wall being
19 constructed for -- what was the purpose of the wall
20 in first place?

21 A. If their listing agent came up with some
22 reason, they might. And I would think that most
23 listing agents would try to figure that out.

24 Q. And --

25 A. Or why is -- he'd say, hey.

1 Q. Right. And then presumably they would
2 have been told [b]y Frank or Frank's listing or
3 whoever it was that it was at the direction of the
4 bank.

5 And if that was the reason it was
6 constructed, would there be any deceptive act at
7 that point?

8 A. That's a lot of if's, but if and if and
9 if --

10 Q. Uh-huh.

11 A. It sounds like -- I can't see that there
12 would be at this point.

13 Q. Okay. All right. Bear with me a
14 moment.

15 A. Sure.

16 Q. Did you have any information as to
17 whether or not Bank of America or Fannie Mae
18 conducted any investigation with regard to 1103 and
19 1104?

20 A. I was told that they were in the process
21 of investigating.

22 Q. Who?

23 A. Who what?

24 Q. Who was in the process of investigating?

25 A. I believe it was Fannie Mae.

1 Q. And do you have any information as to
2 the outcome of that inquiry?

3 A. No, I don't.

4 Q. Do you know what they were
5 investigating?

6 A. I don't know the specifics of what they
7 were investigating, no.

8 Q. Do you know if Fannie Mae or anyone on
9 behalf of Fannie Mae took any action against anyone
10 with regard to --

11 A. I have no knowledge of that.

12 Q. At any point in time, do you know
13 whether or not Fannie Mae sought to delay or halt
14 the sale of 1104?

15 A. Now that I think about it, I think that
16 at one point there might have been. I'm not -- I'm
17 not sure of that. I could be confusing that with
18 another case that I have.

19 Q. Did the Attorney General's Office ever
20 seek to delay or halt the sale of 1104?

21 A. No. We have no such power to do that.
22 No, we didn't.

23 Q. Okay. I'm going to show you what we're
24 going to identify as Exhibit 1. I have a couple for
25 you.

1 (Exhibit Number 1 was marked.)

2 Q. (BY MR. CULOTTA:) The highlights and
3 everything on there are my own. They were not in
4 the original. I think this is all information that
5 we've received from the AG's Office through
6 discovery at some point in time. But the notes on
7 there are mine.

8 It's very small, very hard to see, but
9 basically this is the realtor's communication log
10 regarding 1103 and 1104.

11 A. This is a realtor's communication log?

12 Q. Yes.

13 A. Which realtor's[?]

14 Q. Diana Mayfield.

15 A. Okay.

16 Q. With regard to - if you look at -- let
17 me see if I can find the exact spot. I believe it's
18 at the top of Page 6 or in that general area. In
19 the -- there's an entry from 6/11/12, and it's about
20 in the middle there. It's highlighted.

21 A. Right here (indicating)?

22 Q. Yes. I think it's the first one
23 actually.

24 A. This one up here (indicating)?

25 Q. Yes. There is a communication that she

1 is having with -- that the realtor, the broker is
2 having apparently with you. It says, "Here is a
3 request I received from Sally Miller of the Attorney
4 General's Office this morning. She inquired about
5 the number of bids on the property, and I informed
6 her that we had multiple bids and were going into a
7 multiple offer procedure."

8 What is your understanding of the
9 process with regard to Fannie Mae transactions?

10 A. It's limited, but I can tell you what
11 I -- what my understanding is.

12 Q. Please, do. Yeah.

13 A. That there's -- my understanding is that
14 there are certain real estate agents who are
15 designated as people who can sell Fannie Mae
16 properties, and that at some point Fannie Mae
17 accepts bids on those properties. And bids of
18 people who are going to be owner occupants are given
19 more consideration than those who are going to
20 purchase a property for investment or other
21 purposes. And that they, then, consider offers and
22 take the best one that -- for whatever their
23 criteria is -- the best one and take that. That's
24 my understanding.

25 Q. Do you know what those criteria might

1 be?

2 A. My main one was that they -- that the
3 purchaser be an owner occupant. That's one of them.
4 I don't -- I'm not quite sure. I'm sure it also
5 involves the amount of money that are bid -- is bid,
6 but I don't know the criteria.

7 Q. Okay.

8 A. That's my speculation, but I know about
9 the owner occupant because I've seen -- I've had
10 contact with HUD people in our office, and that's
11 what they've told me.

12 Q. Okay. And going through here a little
13 bit more. It's a little bit above that first
14 highlighted section, but it says, "She wanted to
15 know if Mary Lou Trautwein was a customer, if she
16 was not the customer for this afternoon as she is
17 already on the same offer with Kevin Zipperle.
18 Sally is aware that Kevin made an offer, but must
19 not know that Mary Lou Trautwein is on the offer
20 with him. She is also aware that Kathy Bupp's
21 offers as Kathy Bupp already informed her of the
22 offer, told me I would be hearing from Sally
23 Miller."

24 Sorry.

25 A. Does she says that Kathy Bupp -- or that

1 I said -- I was not quite understanding that.

2 Q. Yeah. And reading this, it sounds to me
3 as if Kathy Bupp told the realtor that you would be
4 contacting her.

5 A. Okay.

6 Q. Do you have any recollection of
7 communication with Kathy Bupp where she requested or
8 instructed that you contact Diana Mayfield?

9 A. Kathy Bupp has never given me any
10 instruction to do anything.

11 Q. Any communication with you that you --

12 A. She may have said this happened and if
13 you want to know more about it, contact Diana
14 Mayfield. That sounds like a logical thought to me.
15 And it's probably what happened -- no, I don't think
16 that's how I knew about Diana Mayfield. It's just
17 someone else told me.

18 Q. Who would that be?

19 A. [Former listing agent] probably.

20 Q. [Former listing agent] told you about Diana?

21 A. Yes, uh-huh.

22 Q. What's your understanding about the
23 disclosures of bids and bidding on properties?

24 A. The disclosure of it?

25 Q. Yes.

1 A. I'm not sure what you mean.

2 Q. Well, are you aware of the fact that
3 these are supposed to be private sealed bids?

4 A. No. I had no idea that they were
5 private sealed bids. I knew they were bids. I
6 didn't know they were private and sealed.

7 Q. Paragraph 258 of the complain says, and
8 I'll quote it, "By offering to purchase Number 1104
9 from Fannie Mae without disclosing that he caused in
10 part the waste and damage to Number 1104, Zipperle
11 committed a deceptive act in violation of Indiana
12 Code 24-9-2-7."

13 As the definition that we've looked at
14 it.

15 A. I need to hear that again, please.

16 Q. Sorry.

17 A. I'm sorry.

18 Q. No. I've screwed it all up.

19 "By offering to purchase Number 1104
20 from Fannie Mae without disclosing that he caused in
21 part the waste and damage to 1104, Zipperle
22 committed a deceptive act in violation of Indiana
23 Code 24-9-2-7."

24 As we discussed, that is the definition
25 of deceptive act under the Indiana Code. And if

1 Kevin had not been involved in the construction of
2 the wall -- well, let me ask you this, what is your
3 understanding of "caused in part the waste and
4 damage of 1104"?

5 A. I have no idea.

6 Q. In your professional capacity as a fraud
7 investigator for real estate transactions and so
8 forth, what does waste and damage mean to you?

9 A. It doesn't mean anything to me.

10 Q. Nothing at all?

11 A. Nothing.

12 Q. What did you learn in these classes?

13 A. Pardon?

14 Q. What did you learn in these classes?

15 A. I have learned about mortgage fraud.

16 There was nothing about waste and damage.

17 Q. Nothing at all?

18 A. No. I find that insulting by the way.

19 Q. I'm just trying to get an

20 understanding --

21 A. I find that very insulting.

22 Q. Well, I'm sorry. I'm just trying to get
23 an understanding because I keep asking you questions
24 with regard to your belief regarding fraud.

25 A. That's legal language that I didn't

1 write.

2 Q. I understand that, but you --

3 A. Legal language --

4 Q. -- but you --

5 A. -- is not always the same as what's
6 taught in investigator training class.

7 Q. Okay. What have you been taught in your
8 investigatory classes regarding --

9 MS. BELLER: I have to object. Would
10 you read -- would you read that -- the paragraph
11 allegation that's basis of your complaint again for
12 me, please.

13 MR. CULOTTA: Sure. Paragraph 258 on
14 Page 36 states, quote, By offering to purchase
15 Number 1104 from Fannie Mae without disclosing that
16 he caused in part the waste and damage to 1104,
17 Zipperle committed a deceptive act in violation of
18 Indiana Code 24-9-2-7.

19 MS. BELLER: Okay. My objection is
20 based in that that a deceptive act and fraud are not
21 necessarily the same thing. The deceptive act and
22 its application in the Home Loan Practices Act
23 itself is a statutory violation. By making a
24 deceptive act it is a per se violation of the Home
25 Loan Practices Act if it's in connection with the

1 real estate.

2 So questioning Sally based upon is it
3 fraud, which probably has very technical elements to
4 it, is another matter.

5 MR. CULOTTA: Okay.

6 Q. (BY MR. CULOTTA:) Well, let me, then,
7 ask this. Based upon the definition as defined
8 by -- deceptive act as defined by Indiana, what
9 deceptive act did Kevin commit by offering to
10 purchase 1104?

11 A. What deceptive act?

12 Q. What deceptive act did Kevin commit by
13 offering to purchase 1104?

14 A. You're asking me what deceptive act did
15 someone commit by offering to buy a condominium?

16 Q. Yeah.

17 A. I don't know. I don't know what the
18 deceptive act to be.

19 Q. Well, let me ask this, what disclosure
20 was Kevin -- let me ask this, what disclosure is
21 paragraph 258 referring to, and to whom was he
22 supposed to have made that disclosure?

23 A. You'd have to read the paragraph to me
24 again.

25 Q. Sure. Paragraph 258 on Page 36 of the

1 complaint states, "By offering to purchase
2 Number 1104 from Fannie Mae without disclosing that
3 he caused in part the waste and damage of
4 Number 1104, Zipperle committed a deceptive act in
5 violation of Indiana [Code] 24-9-2-7."

6 A. So now, what the --

7 Q. The question is, what disclosure was
8 Kevin supposed to have made, and to whom was he
9 supposed to have made it?

10 A. I have no idea. I didn't write the
11 complaint.

12 Q. What does this paragraph mean to you?

13 A. I'd have to sit there and look at it and
14 think about it. Do you want me to do that?

15 Q. Please.

16 A. Okay.

17 Q. There you go.

18 A. Individual persons.

19 Q. I understand, so am I.

20 A. So what paragraph? 258?

21 Q. 258.

22 A. So now, tell me your question again one
23 more time, please.

24 Q. What disclosure was Kevin supposed to
25 have made and to whom was he supposed to have made

1 it?

2 A. Well, from reading here, it says that
3 that disclosure was that he caused in part the waste
4 and damage to 1104.

5 Q. Okay. And what waste and damage [w]as he
6 supposed to have caused?

7 A. I imagine that the waste and damage
8 of -- I imagine that, and this is referring to the
9 law.

10 Q. Right. Okay. Okay.

11 A. So putting up a wall that wasn't going
12 to stay there, that wall is not really supposed to
13 be there. There is going to be two units. The wall
14 is off by three feet. The wall is not a real
15 representation of the two properties.

16 Q. And if he had no involvement in the
17 construction of that wall -- if he had no
18 responsibility for the construction of the wall,
19 then would he owe any obligation to anyone with
20 regard to a disclosure --

21 A. If he had knowledge -- if he had
22 knowledge of the waste and damage, that would be
23 something I would believe that he should disclose,
24 but that's just my opinion. It's not a legal
25 opinion. This is a layman's opinion.

1 Q. Well, you flip-flop between the layman
2 and your professional in the context of the fraud,
3 or what have you.

4 A. I've never designated myself as either
5 one of those. You did.

6 Q. Well, I asked you --

7 A. I just said that I'm not --

8 Q. Okay.

9 A. -- I'm not an attorney.

10 Q. Do you know how many separate bidding
11 rounds there were for the purchase of 1104?

12 A. I only know that there was more than
13 one.

14 Q. And to your knowledge, do you know how
15 many people bid on that particular unit?

16 A. At least two that I know of. I don't
17 know who else.

18 Q. Who were the two that you were aware of?

19 A. Kevin Zipperle, and I'm not sure if
20 Kathy did. She was talking about it, but I'm not
21 positive if Kathy bid on it. I believe she bid on
22 one of the two units. I don't recall which one.

23 Q. Did you ever discuss with Kathy Bupp
24 whether or not she would make a bid on that
25 property?

1 A. No. I believe she did tell me that she
2 had placed it. In some point in this whole
3 investigation, I believe she sent in an e-mail that
4 she had made a bid, but she didn't tell me ahead of
5 time that she was making a bid.

6 Q. To your knowledge, did the property go
7 to the highest bidder?

8 A. I have no knowledge of that.

9 Q. If that was one of the criteria, as you
10 seem think it might be, that that would be -- that
11 it would go to -- that the value would go -- one of
12 the criteria -- the purchase price would be one of
13 the criteria, would that be --

14 A. I think that's something that they'd
15 take into consideration, yes. But I don't think
16 it's the ultimate --

17 Q. Do you know if -- do you know what the
18 ultimate purchase price of 1104 was?

19 A. I did know. I had had knowledge. I
20 just don't recall what it is right now.

21 Q. Do you know what the value of Kathy
22 Bupp's bid was?

23 A. No.

24 Q. In your discussions with Kathy Bupp, did
25 she indicate to you who was -- who she believed was

1 bidding on 1104?

2 A. I don't recall having a conversation on
3 who was bidding. What I recall about that is,
4 first, saying that she'd had a conversation with
5 Kevin, and he told her that he was going to bid on
6 them and that he would sell them to her afterwards
7 if she was interested and that he would still be
8 making some money.

9 Q. Is there anything inappropriate about
10 that particular offer?

11 A. Not that I'm aware of. Well, now that I
12 think about that, if Fannie Mae gives more criteria
13 to people who are the owner occupants, there would
14 be something wrong with that if someone bid -- and
15 I'm not saying -- I'm saying if someone bid on that
16 -- and they said they were an owner occupant and
17 they weren't going to be.

18 Q. And what is your understanding about the
19 owner occupant criteria? How does that -- what has
20 to be done to designate yourself as such?

21 A. The person making the bid says whether
22 or not they're going to be an owner occupant.

23 Q. Okay. And to your knowledge is that --
24 and you said that there was at least two
25 different -- separate bidding cycles for this

1 property, correct?

2 A. That's what my belief is, yes.

3 Q. To your knowledge, were there more than
4 one -- at each time that the bidding cycle occurred,
5 was the bidder required to complete -- or is the
6 bidder in any Fannie Mae sale, are they required to
7 complete a new owner occupant certification?

8 A. That would be my -- that's been my
9 understanding.

10 Q. Okay.

11 A. I'm not positive, but that has been my
12 understanding by talking to realtors who had --
13 designated realtors.

14 Q. Sure.

15 And what would be the rationale
16 requiring a new certification each time if there
17 were prior certifications?

18 A. That's the indications on the subsequent
19 bid may change.

20 Q. Does the -- in your opinion or
21 understanding, do the prior certifications go away
22 with the prior bid?

23 A. That's my understanding.

24 Q. Do you know who signed the owner
25 occupant certification that was ultimately -- for

1 the bid that was ultimately received or accepted by
2 Fannie Mae on 1104?

3 A. I'm not sure. If I remember, I think it
4 was Kevin and Mary Lou.

5 Q. Were both on the accepted bid?

6 A. That's my recollection at this moment.

7 Q. And if it, in fact, were him and Mary
8 Lou, would you have any reason to dispute that?

9 A. No.

10 Q. And if there were only Mary Lou, would
11 you have any reason to believe that any of the prior
12 certifications would have died with those prior
13 bids?

14 A. Can you say -- rephrase that a little.

15 Q. Sure. Sure. Sorry.

16 If Mary Lou was the only signatory on
17 the owner occupant certification that was on the
18 accepted bid, would it be your understanding that
19 any prior certifications would have gone -- I don't
20 know the term they use -- gone by the wayside or --

21 MR. PRELL: Expired.

22 MR. CULOTTA: Thank you.

23 Q. (BY MR. CULOTTA:) Expired with the
24 prior listings or the prior bids?

25 A. That would be what I would say.

1 Q. I'm going to show you what's been
2 identified as Exhibit 2.

3 (Exhibit Number 2 was marked.)

4 Q. (BY MR. CULOTTA:) And if you would --
5 there are several e-mails, but I believe they start
6 from the last page forward. So if you could just
7 take a moment and review those, and I have
8 questions.

9 And again, all the highlighting and
10 notations at the top is mine. It was not on your
11 original that we've received from the AG's Office.

12 Have you ever had any discussions
13 with --

14 A. I'm not finished.

15 Q. Oh, I'm sorry.

16 A. That's okay.

17 Q. Sorry about that.

18 A. Okay.

19 Q. Do you have any independent knowledge of
20 any of the discussions that Ms. Bupp had with Diana
21 Mayfield?

22 A. Not that I recall. I don't recall her
23 telling me anything about it.

24 Q. In the second paragraph at the top
25 there, on the first page, it says, "Our AG team in

1 Indy asked me if I had made an official offer and
2 who handled it for me. I gave her your name and
3 contact information, so you may be hearing from her
4 today or sometime next week."

5 Do you think that that might be
6 referring to you in the reference that was made in
7 Exhibit 1?

8 A. I don't know who she is referring to
9 because she sometimes e-mailed Jenny.

10 Q. Okay.

11 A. And sometimes she e-mailed Paul
12 Schilling. She didn't always e-mail[ed] me.

13 Q. And I'm purely asking for speculation,
14 but do you think that by referencing the,
15 quote/unquote, our AG team in Indy, Ms. Bupp may
16 have been trying to influence Diana Mayfield in her
17 job as the realtor?

18 A. I have no idea what her motive was,
19 absolutely none. I don't know her very well, and I
20 don't know how they think, so -- or -- I have no[~~t~~]
21 idea. I can tell you this, neither her nor anyone
22 else has an AG team in Indy.

23 Q. Are you aware of the fact that Mary Lou
24 has resided in the unit since she purchased it?

25 A. I had the -- someone had told me that

1 she'd moved in if that's what you mean. Yes.

2 Q. When was your first contact with
3 Ms. Bupp?

4 A. You mean in person, or what do you mean?

5 Q. Either by e-mail or by telephone or
6 however it might have been.

7 A. I can't tell you for sure, but I think
8 it was sometime after we met -- we had a meeting
9 with the board members and people who -- the other
10 side -- people who wanted to complain about the
11 board. Some -- it must not have been too much
12 further after there, I think, we got an e-mail from
13 her offering to assist us if we needed assistance.

14 Q. And I think -- correct me if I'm
15 wrong -- that was August 2, 2010 meeting?

16 A. Yes. And I'm not sure. I'm really,
17 really bad with dates. I missed my own wedding
18 anniversary two years in a row.

19 Q. I won't forget that one because that's
20 my kid's birthday.

21 A. The only reason I remember that one is I
22 saw it in my hour and a half e-mail examination. I
23 saw that that was the date.

24 Q. Did Ms. Bupp, was she the one that
25 initiated the first contact with you or vice versa?

1 A. Yeah. I'd never heard of her before I
2 got an e-mail from her.

3 Q. Would you consider yourself friendly
4 with Ms. Bupp?

5 A. I've only been in a physical location
6 with her three times and only, other than that, by
7 e-mail and one or two phone calls. I have no
8 friendship with Ms. Bupp at all.

9 Q. Has she ever mentioned to you that she's
10 had a long-standing personal relationship with Greg
11 Zoeller?

12 A. She mentioned to me that they went to
13 high school together. She didn't quantify their
14 relationship to me.

15 Q. Do you know if Ms. Bupp has communicated
16 with Mr. Zoeller with regard to this matter?

17 A. I have no understanding of that at all.

18 His name is pronounced Zoeller
19 (pronouncing).

20 Q. Zoeller (pronouncing)? Okay. Thank
21 you. I'm not trying to mispronounce.

22 A. No. I knew you weren't.

23 MR. CULOTTA: All right. We're going to
24 mark this as Exhibit 3.

25 (Exhibit Number 3 was marked.)

1 Q. (BY MR. CULOTTA:) And again, the
2 highlighting on there is strictly for our ease of
3 reference. If you would please take a look at
4 paragraph -- the green highlight, please.

5 A. Can you tell me who wrote this before I
6 read this.

7 Q. Sure. This appears to be a -- it's a
8 Facebook posting, and the name begins the statement
9 is the way in which it is posted. So it would have
10 been Kathy Kennedy Bupp.

11 A. Okay.

12 Q. Okay. Do you know or have any
13 independent knowledge as to whether or not Ms. Bupp
14 has attempted to use any kind of political influence
15 to perpetuate this litigation?

16 A. There's nothing to my knowledge that she
17 has done.

18 Q. Do you know whether or not she's had any
19 contacts with any of the individuals that she has
20 listed in this with regard to this litigation? And
21 I'll identify those individuals. She indicates
22 that --

23 A. I know who they are.

24 Q. Okay.

25 A. If anything -- I mean, I have -- was

1 told she went to high school with Greg Zoeller. The
2 only other person in this was -- that I have any
3 knowledge that she may have even any contact with at
4 all, may have been Ron [Grooms].

5 Q. And for the record who is Ron [Grooms]?

6 A. I believe State Representative.

7 Q. From this area?

8 A. I don't know.

9 Q. Okay.

10 A. The reason I know is that's my husband's
11 legislative director.

12 Q. Do you know who Todd Young is?

13 A. I'm not sure. Who is he?

14 Q. I don't know. I was asking you.

15 MS. BELLER: It's the Congressman, then.

16 MR. CULOTTA: Okay. Thank you.

17 MS. BELLER: I went to law school with
18 him.

19 A. I thought you knew when you were
20 questioning.

21 Q. No. I've had no clue?

22 A. Okay. Sorry. I mean I've heard her
23 saying, but I wasn't quite sure.

24 Q. So to your knowledge, she's not -- you
25 have no knowledge one way or the other whether or

1 not she's contacted any of those individuals.

2 A. No.

3 MR. CULOTTA: Actually, we're going to
4 introduce as Exhibits 4 and 5, they were provided to
5 me jointly.

6 (Exhibits Number 4 and 5 were marked.)

7 Q. (BY MR. CULOTTA:) And if you would just
8 give them a look over, please.

9 And I just once again I'll state for the
10 record that these highlights and the caption are
11 ours and were not on the originals.

12 Okay. A couple of things. First off --

13 MS. BELLER: Excuse me. I'd just like
14 to make one note about these exhibits for the record
15 that they don't contain the OAG responses to these.
16 They are just the single isolated e-mails without
17 the rest of the chain. So I just wanted to make
18 that note for the record.

19 MR. CULOTTA: Sure. And I guess I'll
20 follow up on that.

21 Q. (BY MR. CULOTTA:) Do you recall
22 receiving these particular e-mails?

23 A. I believe I did, yes.

24 Q. Okay. And did you respond to these
25 e-mails?

1 A. Sometimes I responded to e-mails.
2 Sometimes Jenny did. So I don't recall which one of
3 us would have because it was addressed to both of
4 us.

5 Q. Would there have been a response to the
6 e-mails?

7 A. If there had been questions, probably,
8 but other than that, I would think our regular
9 response would be thank you for the information or I
10 don't know.

11 Q. Correct me if I'm wrong, but these
12 appear to be social in nature, some of them. Would
13 that be a fair --

14 A. They seem southern in their nature, not
15 social.

16 Q. Southern?

17 A. I see this typical of -- people in the
18 South are very friendly, very calming.

19 Q. Well, being from Louisiana, I --

20 A. Would you agree with me?

21 Q. Well, I'm just asking -- I mean, let me
22 ask you this, you've been investigating for eight
23 years, correct -- or you've been with the Attorney
24 General's Office for eight years?

25 A. Yes.

1 Q. Do you have occasion where the
2 individuals that you come in contact with in your
3 investigations take on the belief that you're a
4 friend of theirs?

5 A. Uh-huh, quite often actually.

6 Q. And would you --

7 A. Or they think we're private attorneys
8 and investigators. Yes, it's very frequent.

9 Q. And would you consider these to be of a
10 more personal nature than a work nature to some
11 degree?

12 A. I don't know. I don't know what the
13 reason be for -- sometimes I have the feeling -- and
14 this is just speculation on my part -- that many
15 people probably on both sides think that this is
16 taking awfully a long time. I'm one of those people
17 by the way. And I had the feeling that if they
18 think we see them more as human beings rather than
19 as cases, they feel -- it's like a reminder, Hey,
20 we're still here.

21 Q. Well, I'm --

22 A. It's something -- I have no reason to
23 understand --

24 Q. Right.

25 A. -- how Kathy Bupp is or any of that.

1 Q. Well, I'm just going to reference that
2 in Exhibit 4 she discusses with you her son.

3 A. Whom I had not idea she had a son before
4 this by the way.

5 Q. And then in Exhibit 5 it references a
6 Christmas party and other things.

7 A. It sounds like a Christmas newsletter
8 that I got or something, from my relatives or
9 something.

10 Q. And then -- so it's possible that she
11 thinks of you and perhaps Jenny Beller more as
12 friends rather than as advocates?

13 A. I have no idea what she thinks,
14 honestly, or what her motive is.

15 Q. Well, let me ask you this --

16 A. We don't reciprocate in kind with
17 information about our families or her families or
18 anything like that.

19 Q. Let me ask you this. She has a
20 reference in the final sentence of Exhibit 5. It
21 says, "I look forward to seeing you in February."

22 Do you have any recollection of what
23 that particular meeting was?

24 A. What year was this?

25 Q. 2014. The e-mail is from January 14,

1 2014.

2 A. Oh. Oh, that would be the next one. I
3 have no idea. I don't -- I don't -- I don't know.
4 The only thing I can think of -- let me think. Let
5 me see this. I don't recall actually. I don't -- I
6 don't know why we would have been coming down here,
7 or she would have been coming up there. You might
8 want to ask her that. I don't recall. It must have
9 been something, but --

10 Q. Sure. I'll show you what we introduce
11 as Exhibit 6, please.

12 (Exhibit Number 6 was marked.)

13 Q. (BY MR. CULOTTA:) I think you could --
14 one or two, some of the highlighted portions that
15 I'll direct you to. And you just testified that
16 y'all don't become personally involved or attached
17 to cases. Let me direct your attention to bottom of
18 page -- to the blue section at the bottom of Page 3,
19 please. It appears to be an e-mail from you to
20 Kathy Bupp.

21 A. Uh-huh.

22 Q. Cc Jenny Beller. And you indicate going
23 to Cape Cod tomorrow. Is that --

24 A. Wait, I don't see where you're saying.

25 Q. The bottom of Page 2, sorry. It's an

1 e-mail that you had with --

2 A. Is that in green?

3 Q. No, no, no. Sorry. It's the next. Oh,
4 I'm sorry. Page 3. Page 3.

5 A. Okay. Oh, yes, I see that. Cape Cod,
6 by the way, is where my children -- my daughter and
7 my son-in-law and my twin four-year-old
8 grandchildren live in Boston. So, we went to Cape
9 Cod.

10 Q. Would that typically be the kind --
11 would you typically give that kind of information to
12 what I would consider to be a complainant or a
13 witness in a matter? Is that typical that you would
14 have those kinds of personal communications --

15 A. If I were really excited about going to
16 Cape Cod, yeah.

17 Q. Fair enough.

18 A. I might have had said that to everyone
19 that day.

20 Q. With regard to -- if you go to page --
21 what number -- one, two, three, four -- page 4, it
22 says -- the blue section on the top, and there
23 appears to be an e-mail from Jenny Beller.

24 A. I'm sorry. I may not be on the right
25 page with you.

1 Q. I think it's the next one.

2 MS. BELLER: Next one, yes.

3 A. Okay. I'm sorry.

4 Q. There's an e-mail that appears perhaps
5 to be from Jenny Beller dated June 19, 2013 to Kathy
6 Bupp.

7 MS. BELLER: I think you're too far --

8 MR. CULOTTA: I'm sorry.

9 A. Okay. All right.

10 Q. And it references what appears to be
11 social, personal vacations and that sort of things.
12 So again, I ask you, I mean, is it uncommon or
13 common that y'all would -- y'all, my southern is
14 coming out.

15 A. Your southern --

16 Q. That when you're interacting with
17 witnesses and complainants that social and personal
18 information would get shared with them?

19 A. Not typically, but I think I can give
20 you some clarification on this.

21 Q. Sure.

22 A. Jenny's husband has had a massive
23 stroke. It's been very debilitating and devastating
24 to her.

25 Q. Absolutely.

1 A. Unbelievable. His whole right side of
2 his body is paralyzed. He can't talk or
3 communicate. Jenny was so affected by this that she
4 often talks to complete strangers about Chuck all
5 the time. I mean, sometimes it amazes me. So I can
6 see Jenny saying this to -- I mean, I have seen her
7 say it to people, many people she's never met
8 before, talk about Chuck.

9 And Jenny has camera in her house when
10 Chuck's there. We often have to look at Chuck
11 playing his iPad. Chuck is part of our -- he's
12 almost part of the AG's because that -- not only is
13 Jenny an excellent attorney, but she's a full-time
14 caregiver for Chuck.

15 Q. I understand.

16 A. And so I don't find this unusual at all,
17 not at all. If she'd talked about some other thing,
18 then I might question that, but when she's talking
19 about Chuck, she talks about him to everyone.

20 Q. Okay. Have you had any -- we're done
21 with that one.

22 A. Okay.

23 Q. Have you had any communications with the
24 current Harbours board regarding this litigation?

25 A. I'm not -- have we had --

1 Q. Have you discussed this matter with,
2 say, Russ Johnson, the current president?

3 A. Yes. Yeah, we talked to Russ Johnson.

4 Q. When was the last time you spoke to Russ
5 Johnson?

6 A. It's been more than a year ago, I
7 believe.

8 Q. And what -- well, let me ask you this,
9 what is the AG's authority -- gives him the
10 authority to conduct this inquiry? Who are you
11 representing?

12 A. I'm going to have to -- that's, that's a
13 legal -- Jenny can tell you. I couldn't say I see
14 we have the -- what it is, but we have legal
15 authority. I don't -- couldn't tell you exactly
16 where it is in the law, but Jenny can.

17 Q. No, that's fine.

18 Who do you consider then is the Attorney
19 General's client in this matter?

20 A. The State of Indiana.

21 Q. Okay. And what is the State of
22 Indiana's interest in this case?

23 A. There were questions about Home Loan
24 Practices Act. We also have authority under -- it
25 was House Bill 1058, but I don't know what the law

1 is now for homeowners associations where we have
2 authority over misrepresentation of funds by a board
3 member or fraud committed by a board member. I
4 don't know the exact language. Jenny knows it all.

5 Q. Okay. So when you're talking about
6 misappropriation of funds or anything like that and
7 complainant makes no reference of misappropriation
8 to funds, so I'm assuming there was no finding of
9 any sort of misappropriation. Would that be an
10 accurate statement?

11 A. If it's not in the complaint, then that
12 would be an accurate statement.

13 Q. And with respect to -- would it be --
14 would it be correct to say -- and I don't know, so
15 I'm asking -- would it be correct to state that the
16 Attorney General's Office represents the board or is
17 it representing the homeowners association?

18 A. We represent the citizens of Indiana.

19 Q. And in that context then, if the -- let
20 me ask you this, it is my understanding that Russ
21 Johnson has been the president for approximately
22 three years. Do you have any idea?

23 A. I don't know. No.

24 Q. It's my understanding that he has been
25 reelected I believe --

1 MR. ZIPPERLE: Appointed president,
2 elected once.

3 MR. CULOTTA: Don't worry about that.
4 Disregard. I'm shifting gears here.

5 Q. (BY MR. CULOTTA:) What was the nature
6 of your discussions with Mr. Johnson?

7 A. What his feeling was about the
8 malcontents as they have been named. He felt they
9 had an illegitimacy. How it was for him -- what his
10 opinion of Kevin was and other people on the board,
11 what his opinion of them was.

12 Q. What was his opinion with regard to the
13 disgruntled homeowners or disgruntled residents?

14 A. He didn't say they didn't have anything
15 to be unhappy about, but he thought with his
16 leadership that he possibly could straighten things
17 out there.

18 Q. To your knowledge have there been any
19 consumer complaints issued with regard to -- or
20 lodged with regard to Mr. Johnson or the current
21 board?

22 THE WITNESS: Am I allowed to answer
23 that?

24 MS. BELLER: If they're not licensees,
25 yes.

1 A. Yes, there have been.

2 Q. Okay. And I think we've already
3 requested any and all consumer complaints with
4 regard to The Harbours, and that includes anything
5 that's recent. So I would appreciate if y'all could
6 look and see if there's whatever new ones are.

7 Do you know what those complaints
8 regard?

9 A. Payment of a -- I'm just trying to
10 remember. I believe, and I'm not sure, payment of
11 damage to board members' cars that there was no
12 proof who damaged cars. I believe that was it.

13 Q. What was the -- am I to understand
14 then -- and correct me if I'm wrong -- but that
15 there was damage to the board members' cars that --

16 A. At some point there had been alleged
17 damages to board members' cars, and allegedly
18 payments were made to these board members for the
19 repair of their cars.

20 Q. By whom?

21 A. Whom what?

22 Q. Who made payments to the board members
23 for the repair of the cars?

24 A. The board, the board.

25 Q. And was that something that interest --

1 or that the AG's Office had any interest in or that
2 anything that would warrant an investigation by the
3 Attorney General's Office?

4 A. Every consumer complaint gets an
5 investigation.

6 Q. Okay. Is it something that beyond an
7 initial inquiry caused the Attorney General's Office
8 to take any further action?

9 A. No.

10 Q. Are there any other inquiries or
11 complaints that you can recall?

12 A. Seems like there was, but I can't recall
13 what it was. No, no, I don't recall.

14 Q. Have you or anyone else from the
15 Attorney General's Office attempted or communicated
16 with the board to try to seek their support for this
17 litigation?

18 A. I'm not quite sure what you mean.

19 Q. Has the Attorney General's Office or you
20 particularly, sought the support of the board for
21 this litigation?

22 A. No. How could they support us -- well,
23 never mind. I was just surprised by your question
24 because it made no sense.

25 Q. Well, I want to [k]now if -- what is your

1 understanding of the general -- what is your
2 understanding of the general feeling of this
3 litigation by residents of The Harbours?

4 A. What residents?

5 Q. All residents.

6 A. I don't know what the feeling is by the
7 residents.

8 Q. Okay. I'm just asking.

9 A. Yeah. No, I have no idea.

10 Q. Have you had any -- well, let's go off
11 for just a second if you don't mind, please.

12

13 * * *

14 (Off the record.)

15 * * *

16

17 EXAMINATION

18 BY MS. BELLER:

19 Q. Okay. Sally, approximately how many
20 cases have you worked at the Office of the Attorney
21 General?

22 A. Since I've been there, I'm going to
23 say -- I'm thinking around 200 -- probably over a
24 thousand.

25 Q. Okay. And what is your current

1 caseload?

2 A. I currently have 90-plus cases.

3 Q. Okay.

4 A. I say 90-plus because I know there is
5 some more that I haven't tapped in yet.

6 Q. Let's talk about your recollection of
7 the purchase of the condominium 312 where Kevin
8 Zipperle purchased it from Mr. Davis.

9 A. Okay.

10 Q. Okay. You were asked a number of
11 questions whether you identified any fraud in that
12 transaction.

13 A. Right.

14 Q. Let me ask you this, generally speaking,
15 when a real estate transaction occurs that that
16 transaction is recorded on a HUD-1 settlement
17 statement?

18 A. Yes.

19 Q. And is there a requirement that the
20 HUD-1 settlement statement be accurate as to where
21 all the money comes from and where it goes?

22 A. Yes.

23 Q. And that's a federal requirement?

24 A. Yeah, like, I believe there's a
25 Truth-in-Lending statement that precedes -- that had

1 one.

2 Q. Okay. So if there's additional
3 consideration in a real estate transaction, for
4 example, someone has given something of value that's
5 not recorded on the table, what would that -- would
6 that be considered deceptive?

7 A. Yes. It's money outside of closing.

8 Q. Okay. And that is often actionable?

9 A. Yes.

10 Q. Have you had cases that had resulted in
11 action against that sort of --

12 A. Yes.

13 Q. -- activity?

14 Do you know if there's a statute of
15 limitations on those activities?

16 A. I don't think there is a statute of
17 limitations because there isn't one with realtors
18 that I -- I'm not -- I'm not sure.

19 Q. Okay.

20 A. I'm not positive.

21 Q. Do you recall -- I just -- I want to
22 clarify this -- a meeting with Dawn Elston and [former
23 property manager]?

24 A. Yes.

25 Q. Yes. And we asked [former prop. mgr.] to provide

1 us with her handwritten notes of what time she kept?

2 A. Yes.

3 Q. Okay. Have you analyzed those notes?

4 A. If I had them, I would have.

5 Q. Okay. Is it possible that they are in
6 my office?

7 A. It's possible. You have several boxes
8 in the office -- in your office.

9 Q. But you do recall receiving --

10 A. Yes.

11 Q. You do recall that. Okay.

12 A. I would have analyzed them.

13 Q. Just with regard to the Attorney
14 General, this investigation has gone on -- would
15 have been about for Harbours I'd say more than five
16 years, is that correct?

17 A. Our office has, but yeah.

18 Q. People at The Harbours randomly send us
19 e-mails, is that correct?

20 A. Yes.

21 Q. Unsolicited?

22 A. Unsolicited. People I've never heard
23 of.

24 Q. And was one of those individuals Tom
25 Pike?

1 A. Tom Pike has sent us information, yes.

2 Q. Have we met with Tom?

3 A. Yes.

4 Q. Okay. I'm going to talk about the
5 purchase of 1103 and 1104 because you were asked
6 several questions in regard to the wall.

7 A. Yes.

8 Q. And as you stated earlier, I did -- I
9 being Jenny Beller -- did an amount of this
10 investigation myself, right?

11 A. You did a lot of it, and what you didn't
12 do, you directed me.

13 Q. Okay. Is that unusual?

14 A. Yes.

15 Q. Okay.

16 A. Well --

17 Q. With big cases?

18 A. With big cases you -- I don't want it to
19 sound like you're micromanaging, but you did in this
20 case.

21 Q. Okay. Now, let's talk about condominium
22 1103. Were these condos purchased -- they were
23 purchased separately, right? 1103, Mr. Zipperle
24 purchased first?

25 A. Yes.

1 Q. Okay. And that was through a short
2 sale?

3 A. That's what I'm -- yeah.

4 Q. Who was the realtor that negotiated that
5 short sale?

6 A. I think it was [former listing agent].

7 Q. Okay.

8 A. Yes.

9 Q. Did [former listing agent] make any comments to
10 you regarding who put up the wall?

11 A. She said that was -- to her belief that
12 it was Kevin.

13 Q. Okay. Do you know if she told anyone
14 that, do you recall?

15 A. I don't know if she told Diana Mayfield
16 that or -- I don't remember, I'm sorry.

17 Q. Okay. When you're negotiating a short
18 sale, do you work with the bank?

19 A. Yes.

20 Q. Okay. So once the short sale was
21 completed, what happened to --

22 A. I thought you meant did she ask --
23 individual --

24 Q. No.

25 A. I'm not sure you meant -- I was -- I

1 didn't think in terms of an entity.

2 Q. Okay.

3 A. I believe she did talk to the bank about
4 it.

5 Q. Talked to the bank about it? Do you --
6 okay.

7 Kevin purchased condominium 1103 on a
8 short sale, is that correct?

9 A. That's my understanding.

10 Q. And what happened after that?

11 A. Then he was attempting to buy 1104.

12 Q. Okay. Was 1104 foreclosed upon before
13 that?

14 A. Yes, I believe so.

15 Q. And that's why the bank transferred from
16 Bank of America to Fannie Mae?

17 A. Yes.

18 Q. Okay. So we've all seen pictures of the
19 wall, and you described it as being just some
20 drywall, that there was a -- if I recall -- a
21 cutout?

22 A. Yes.

23 Q. Above the sink?

24 A. Uh-huh. (Witness answers in the
25 affirmative.)

1 Q. You can stick your hand into the other
2 condominium?

3 A. Uh-huh. (Witness answers in the
4 affirmative.)

5 Q. You can pull your hand out?

6 A. Yes.

7 Q. And --

8 A. Like a ho[ε]key-pokey.

9 Q. The ho[ε]key-pokey.

10 Could anyone live in -- you were in 1104
11 as you testified earlier. Could anyone live in 1104
12 in that condition?

13 A. No. I believe one light switch turned
14 on the light in the other condominium. The sink was
15 cut in half. It was not -- surely, clearly
16 habitable.

17 Q. Okay. And at that time Kevin owned
18 1103?

19 A. Yes.

20 Q. Okay. Would you say it's reasonable to
21 infer that it was important to Kevin to purchase
22 1104?

23 A. Yes.

24 MR. CULOTTA: I'll object. Calls for
25 speculation.

1 THE WITNESS: You know why I'm laughing,
2 don't you? Because she was called for speculation
3 from me, like, 25,000 times.

4 A. Okay. I'm sorry.

5 Q. Okay. Is it logical to assume --

6 A. Yes.

7 Q. -- that if Kevin owned 1103 and it was
8 divided by a substandard wall with a hole in it and
9 the electronic switches for different devices could
10 be turned on on the other side --

11 A. That would be a logical conclusion to
12 me.

13 Q. -- that it was imperative for him to
14 purchase 1104?

15 MR. CULOTTA: Same objection.

16 A. That would be conclusion I would believe
17 I and most people would draw that conclusion.

18 Q. A reasonable person could co[nc]lude that?

19 A. A reasonable.

20 Q. And so the -- do you recall if [former listing
21 agent] discussed submitting bids with Diana
22 Mayfield for Kevin for the purchase of this condo?

23 A. I believe she did.

24 Q. Okay. Was that including Kevin and Mary
25 Lou?

1 A. There was talk about Mary Lou, but I
2 can't remember what it was.

3 Q. Did Diana Mayfield believe that Kevin
4 and Mary Lou were in a relationship?

5 A. Yes.

6 Q. Okay. That wasn't because they didn't
7 represent that to her, is that correct?

8 A. That was her belief. Somehow she got
9 that from [former listing agent].

10 Q. She came to believe that. And then whe[n]
11 you subsequently told her that Mary Lou was not the
12 same age as Kevin --

13 A. Uh-huh.

14 Q. -- and that Kevin was married --

15 A. Uh-huh.

16 Q. -- did that change her opinion about her
17 involvement in negotiating with Fannie Mae?

18 A. Yes.

19 Q. How did it change her opinion?

20 A. Well, before she thought they were a
21 couple and they were going to move in together.
22 Afterwards she thought they were not a couple, they
23 were not going to be moving in together, so they
24 were not going to be occupying that space together
25 in her estimation.

1 Q. And because they weren't going to be
2 occupying the space together, they couldn't both
3 sign an owner occupant certificate for the Fannie
4 Mae home bidder process?

5 A. That's correct.

6 Q. Okay. And yet at that time they had
7 submitted -- do you recall they had submitted --

8 A. Yes, they had.

9 Q. Okay. An owner occupant certificate
10 that had both of their signatures on it?

11 A. Yes.

12 Q. Okay. Who funded the purchase of 1104?

13 A. Kevin Zipperle.

14 Q. And do you recall if Mary Lou did
15 anything after that?

16 A. I believe that she -- I'm not sure what
17 the legal term was put that so that when she passed
18 away, that that condominium would go to Debbie
19 Zipperle.

20 Q. What -- I'll withdraw that.

21 I just want to clarify having being
22 looking at Exhibit 2, are you involved in this
23 conversation at all?

24 A. No.

25 Q. Was today the first time you'd seen that

1 e-mail?

2 A. I don't recall ever seeing it before.

3 Q. And I just want to ask you generally
4 about Kathy Bupp.

5 A. Please do.

6 Q. Is she talkative?

7 A. Very.

8 Q. By very, how do you mean very?

9 A. I mean, she goes on and on and on.

10 Q. Does she breathe?

11 A. Only on occasion.

12 Q. Only on occasion.

13 Is it surprising that her e-mails are
14 voluminous?

15 A. Not surprising at all. If you were to
16 go to the Facebook page, The Harbours, and you read
17 that stuff, you would see that her postings are
18 pages and pages long. So I think that's just her
19 MO.

20 Q. Is there any answer today that you want
21 to clarify that you didn't have an opportunity to?

22 A. I'm just -- I don't know if there is an
23 answer, but I just so blown away thinking that Kathy
24 Bupp and I have - are friends. I've only seen this
25 woman three times in my life, and my only

1 communication has been through e-mail and a couple
2 of phone calls. So I'd like to clarify that.

3 I have no friendship with anyone at The
4 Harbours. I've never seen anyone at The Harbours
5 socially. I'd never heard of The Harbours, may
6 never want to hear about it again, before this
7 investigation.

8 Q. And I just like to put this out there
9 too. Hypothetically, if someone was a friend of
10 your boss --

11 A. You?

12 Q. Just hypothetically.

13 A. Okay.

14 Q. -- would you be rude to that person?

15 A. I try not to be rude to anyone, but no.

16 Q. Okay. And are you friendly with other
17 consumers?

18 A. I'm cordial. And if I'm in an
19 investigation over a long period time, I might say
20 something like Have a good weekend or something
21 cordial, something human. I would call it human.

22 Q. Would you talk about your grandbabies?

23 A. I would talk about my grandbabies with
24 anyone. They are cutest two little -- you've ever
25 seen.

1 Q. So being cordial and chatty is not
2 unusual?

3 A. No. I'll show you pictures if you want
4 to see.

5 Q. Okay.

6 MS. BELLER: No further questions.

7 MR. CULOTTA: I just have a couple or
8 three follow-ups if you don't mind. Let's go off
9 just for two seconds.

10

11 * * *

12 (Off the record.)

13 * * *

14

15 EXAMINATION

16 BY MR. CULOTTA:

17 Q. With regard to the sale, specifically
18 the sale of Unit 312, other than that -- well, let
19 me ask you this, have you seen any HUD-1s from other
20 units beside 312?

21 A. I can't recall actually.

22 Q. Do you know whether or not the price of
23 parking spaces is identified on the HUD or where
24 that might be identified?

25 A. I would imagine it would be under other,

1 but I don't recall that.

2 Q. Okay.

3 A. You're asking me about documents. I
4 haven't seen them for years, by the way.

5 Q. That's fine. I understand that.

6 To your knowledge or belief, was there
7 any monies not accounted for on the HUD-1 for the
8 sale and purchase of Unit 312?

9 A. If the parking spaces were not included
10 on there, that would be monies as a consideration.

11 Q. Is that your understanding that they
12 were required to be there?

13 A. Any consideration is required to be
14 there. It's my understanding.

15 Q. And what are you referring to when you
16 use the term consideration? What are you -- what do
17 you mean?

18 A. Anything extra, outside of the exact
19 cost of that -- anything that's going to be given as
20 part of that deal.

21 Q. Is it your understanding -- well, let me
22 ask you this, are you aware of the fact that certain
23 parking spaces convey with the units?

24 A. Yes.

25 Q. So would those parking spaces then be

1 required to be identified on a HUD-1?

2 A. I'm not sure about that. If they were
3 considered part of the unit, maybe not, but I'm not
4 sure.

5 Q. Okay.

6 A. I don't know how it is.

7 Q. With regard to -- if I'm understanding
8 correctly, you said that [former listing agent] told you
9 that she believed Kevin put up the wall.

10 A. Yes.

11 Q. Do you know where she may have gotten
12 that information?

13 A. I would -- I don't know.

14 Q. And I think -- and correct me if I'm
15 wrong -- did you testify that you believed that [former
16 listing agent] spoke to the bank with regard to the wall?

17 A. I believe so, yes.

18 Q. Did she tell you that she'd spoken to
19 the bank?

20 A. That's my recollection.

21 Q. And do you recall what she said that she
22 told the bank regarding the wall?

23 A. I don't think she told me what she told
24 the bank about the wall, only of its existence.

25 Q. So there was nothing potentially

1 nefarious, just simply noticing of the fact that it
2 is there?

3 A. I don't know what she said, so I don't
4 know how nefarious or not nefarious.

5 Q. And we've talked extensively about
6 friendships, or what have you, that may not have
7 existed or beliefs of friendships. And I understand
8 that there was the lunch that was had between
9 members from the Attorney General's Office and
10 individuals from The Harbours after the filing of
11 this complaint.

12 Whose suggestion or idea was it that
13 that occur?

14 A. That was Jenny's.

15 Q. Who was present at that lunch?

16 A. I may leave someone out with people who
17 were mentioned in the complaint. Jenny wanted them
18 to have a copy of it. I don't remember if they all
19 showed up, but I remember Betty Cantrell being
20 there. And I believe Kathy Bupp was there, possibly
21 Tom Pike. I can't remember who else was there.
22 It's been years ago.

23 We knew that after we filed the
24 complaint, it was going to be lunchtime. We wanted
25 to drop off a copy of the complaint for these

1 people. We didn't have time to do that and have
2 lunch too. And sometimes our stomachs dictate what
3 to do.

4 Q. And I hope we will have lunch shortly.

5 A. Yes, right now.

6 MR. CULOTTA: I have no further
7 questions.

8

9

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(Off the record.)

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EXAMINATION

14

BY MR. PRELL:

15

Q. If you talked to [former listing agent] about the
16 wall, [former listing agent] was representing the buyer
17 with the bank on 1103, let's say.

18

A. Okay.

19

Q. [Former listing agent], did she not tell you that
20 she was the one that the bank advised to put the
21 wall up and then she advised me?

22

A. She did not.

23

Q. That she is one that has talked to the
24 bank?

25

MR. CULOTTA: Frank, just hold on two

1 seconds. If you ask her a question, you're going to
2 let her give her answer.

3 Q. (BY MR. PRELL:) Oh, go ahead.

4 A. She did not say that to me.

5 Q. Okay. And you think that 1103 was
6 devalued because of placement of the wall and the
7 fact that the sink was open and there was a light
8 switch that operated lights in 1104. Is that your
9 belief?

10 A. Did you say the word devalued? Is that
11 what you said.

12 Q. Uh-huh.

13 A. I'm not sure that that's the right word.
14 I would say it was -- seemingly was unsellable that
15 way to -- most people would say, Hey, there's a wall
16 in the middle of my condo. Yeah.

17 Q. Okay. Would you think the same for
18 1103?

19 A. I thought you were asking me about 1103.

20 Q. Well, 1104 is what I'm saying. If the
21 wall was up there and -- was 1104 devalued?

22 A. As is, yes.

23 Q. Huh?

24 A. If it was sold as like that, yes.

25 Q. Okay. Would 1103 be devalued also then?

1 A. I would think so.

2 Q. Okay. I think it would be the same for
3 both of them.

4 A. I would too, wouldn't you.

5 MR. PRELL: That's it. I was just
6 curious.

7 MS. BELLER: Okay.

8

9 * * *

10 (Off the record.)

11 * * *

12

13 EXAMINATION

14 BY MR. CULOTTA:

15 Q. Do you have any knowledge as to what the
16 value of those condominiums were prior to -- when
17 Frank was trying to sell them officially?

18 A. What the value, or what he is asking?

19 Q. What the bank valued them to be?

20 A. I don't recall. I may have seen that,
21 but I don't recall right now. I think -- I'm sure
22 it was more -- I would guess it was more than what
23 they actually sold for. I'm guessing.

24 Q. If I were to tell you that the combined
25 purchase price of the two units was greater than the

1 value that was placed on them by the bank, would
2 that be surprising to you?

3 A. You're saying -- let me understand what
4 you're saying.

5 Q. Sure.

6 A. The combined value of both 1103 and
7 1104, value set by the bank?

8 Q. I'm sorry. Let me rephrase it.
9 Combined purchase price of 1103 combined with the
10 purchase price of 1104, if I were to tell you that
11 those two combined prices was greater than the value
12 that the bank had actually valued the units?

13 MR. PRELL: And I have to -- I have to
14 object to this as not being -- the bank valued the
15 units at what time?

16 MR. CULOTTA: At the point that they
17 were being placed on the market.

18 A. Okay. They were placed on the market
19 more than once.

20 Q. Well, at the time that Frank was selling
21 the units, the value of the -- excuse me, the value
22 of the short sale --

23 A. Uh-huh.

24 Q. Would it be unusual or surprising to you
25 that the value that was paid for the short sale was

1 greater than the value that the bank -- than the
2 value placed on the unit by the bank?

3 A. Would I be surprised?

4 Q. Yes.

5 A. No. I would think that the bank may
6 have thought they had someone where they had to
7 go -- if they wanted to combine the unit, they'd had
8 to go higher.

9 Q. Would it be surprising to you that the
10 accepted bid by Fannie Mae was greater than the
11 value of the unit as it -- when it was placed
12 originally on the market?

13 MS. BELLER: I have to object, again, to
14 this because when we're talking about it, are we
15 talking about -- it's just not clear. The value of
16 the combined unit because the unit obviously as a
17 larger condominium fixed up is going to be a
18 different kind of value than the two separate units.
19 And it's kind of -- these questions are unclear.
20 And I believe -- and further that Frank had a
21 condominium for sale maybe two years prior to the
22 actual short sale. And so, I'm -- we don't have a
23 specificity of this question. It's not --

24 MR. CULOTTA: That's fine. We're good.
25 I'm done.

1 MS. BELLER: I'm done.

2 MR. CULOTTA: Are you done, Frank?

3 MR. PRELL: I'm done.

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(Witness excused.)

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24 STATE OF INDIANA)
) SS.
25 COUNTY OF CLARK)

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I, ALISHA McRAE, a Notary Public within and for the State at Large, do hereby certify that the foregoing deposition was taken before me at the time and place and for the purpose in the caption stated; that the witness was first duly sworn to tell the truth, the whole truth and nothing but the truth; that the deposition was reduced to electronic shorthand and recording by me in the presence of the witness; that the foregoing is a full, true and correct transcript of my electronic notes and recording; that there was no request that the witness read and signed this deposition; that the appearances were as stated in the caption

WITNESS MY SIGNATURE, this 5th day of March, 2015.

My commission expires August 18, 2021.

/S/ALISHA MCRAE _____

ALISHA MCRAE
STATE OF INDIANA
COURT REPORTER
NOTARY PUBLIC, STATE AT LARGE