

IN THE CLARK CIRCUIT COURT NO. 2
STATE OF INDIANA
CAUSE NO. 10C02-1208-PL-88

STATE OF INDIANA,)
)
Plaintiff,)
)
-vs-)
)
KEVIN ZIPPERLE,)
MARY LOU TRAUTWEIN-LAMKIN,)
SHARON CHANDLER, and)
FRANK PRELL,)
)
Defendants.)

The deposition upon oral examination of SHARON CHANDLER, a witness produced and sworn before me, Angela Thompson Stidham, a Notary Public in and for the County of Scott, State of Indiana, taken on behalf of the Plaintiff at the offices of the Attorney General, 720 rolling Creek Drive, New Albany, Floyd County, Indiana, on the 20th day of May, 2013, pursuant to the Indiana Rules of Trial Procedure.

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A P P E A R A N C E S

FOR THE PLAINTIFF: Jennie Beller
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* * *

1 SHARON CHANDLER, having been first duly
2 sworn to tell the truth, the whole truth and nothing
3 but the truth relating to said matter, was examined
4 and testified as follows:

5

6 DIRECT EXAMINATION,

7 QUESTIONS BY JENNIE BELLER:

8 Q. I'm sure your attorney has explained the
9 process of a deposition. Have you ever been deposed
10 before?

11 A. No.

12 Q. Okay. I'm going to try to be as efficient
13 and move forward as fast as we can. The outline for the
14 day is we will go to about 12:30, maybe 1:00 o'clock. If
15 we haven't finished by then, then we'll break for lunch
16 and come back. We have to leave for Indianapolis by
17 4:00 o'clock, so we'll go no later than 4:00 today, but
18 hopefully we'll finish up much sooner than that.

19 A. Okay.

20 Q. I am going to ask you questions. If you
21 don't understand something about the question, please let
22 me know. And your attorney will object if he finds a
23 question offensive or needs to be restated in some way.

24 So will you state your name for the record.

25 A. Sharon Chandler.

1 Q. And where do you reside?

2 A. One River Pointe Plaza, Number 705,
3 Jeffersonville.

4 Q. And how long have you resided there?

5 A. Probably ten years.

6 Q. Ten years?

7 A. I've owned it since it was first sold. I
8 think I bought it in 2000.

9 Q. Okay.

10 A. But I didn't move in for a couple of years.

11 Q. Have you owned any other property there at
12 The Harbours?

13 A. No.

14 Q. Have you owned any other property in -- do
15 you own any other property?

16 A. Yes.

17 Q. Where is that?

18 A. I own a house on Springdale Drive in
19 Jeffersonville, and I own a building lot on Evergreen
20 Circle in Jeffersonville.

21 Q. Okay. Can you give me some of your
22 educational background?

23 A. Well, I'm a graduate of Jeffersonville High
24 School.

25 Q. Okay.

1 A. A product of -- a local product. I
2 received a B.S. in education from Ball State University.
3 I have a master's degree from Catherine Spalding. I have
4 done postgraduate work at the University of Louisville,
5 University of Florida -- or Florida State, several
6 other -- well, Ball State again, and Indiana University
7 Southeast.

8 Q. I know you are a licensed real estate?

9 A. That's correct.

10 Q. Did you have any other professional
11 licenses?

12 A. Yes. I had a teaching license and a
13 principal's license, supervision. I forget what it's
14 called, but I have a principal's license also. I was a
15 principal.

16 Q. And where were you a principal?

17 A. Parkview Middle School. A school of about
18 1,000 students and 120 staff.

19 Q. Is that here in Jeffersonville?

20 A. Jeffersonville.

21 Q. And how long were you principal there?

22 A. I was the assistant principal probably 20
23 years. Prior to that I was a school librarian, and I
24 worked at River Valley Middle School, as well as Parkview.
25 Parkview first, and then went to River Valley. When this

1 position came open as assistant principal, I went back to
2 Parkview as an assistant principal, and served in that
3 capacity for probably 18 years before I applied and got
4 the principal's position.

5 Q. When did you retire?

6 A. 2005.

7 Q. 2005. Okay. You said earlier that you
8 bought your condominium at The Harbours, but when did you
9 come to live there?

10 A. Two years after I bought it, approximately.
11 I am going to say -- well, it was before the developer had
12 sold all of the condos, if that gives any date. I think
13 that was 2004, I believe. I'm not sure about that. But
14 it was about two -- I owned it two years.

15 Q. Okay.

16 A. It was apartments. The man that was
17 renting there when I bought it was transferred. The rent
18 went to me instead of The Harbours at Riverpointe, and
19 when he left, that's when I moved in.

20 Q. Okay. Did you know anyone that lived at
21 The Harbours when you rented it?

22 A. At that time?

23 Q. Yes.

24 A. No, I did not.

25 Q. Okay. I understand you are a member of the

1 transition committee?

2 A. That's correct. I was appointed by Allen
3 Feinsilver.

4 Q. Do you know why Mr. Feinsilver appointed
5 you? Did he give any indication?

6 MR. CULOTTA: I'm going to object. It
7 calls for speculation.

8 A. I really don't know. I can't answer that.

9 Q. What did he tell you you would be doing as
10 a member of the transition committee?

11 A. I really never had a conversation. He had
12 the president -- I think that was her title. Sandy Wilson
13 is the one that invited me -- or called me about it. I
14 had no interview with Allen. I doubt if Allen knew any of
15 us, to be honest with you.

16 Q. Okay. So Sandy approached you. At this
17 time did you have your real estate license?

18 A. No.

19 Q. Okay. What were you told about your duties
20 as a member of the transition committee?

21 A. Well, it was in preparation for turning the
22 associate -- turning it over to the homeowners
23 association, and we were to make preparations -- or to
24 work in that capacity, as I understand it, and actually
25 just started the first board.

1 Q. What sort of preparations needed to be done
2 to turn it over?

3 A. Well, there were several things. Of
4 course, the bylaws and declarations were out there
5 already, but financial -- I am going to have to think
6 about that one.

7 Q. Sure. Take your time.

8 A. Of course, we at that point had to elect
9 officers. I know there was a million things, and I'm just
10 not pulling them out of my head right now.

11 Q. Who were you responsible to?

12 A. I think as a board we were equally -- I
13 would imagine the answer to that would be the developer at
14 that time, because it was transitioning. He had not left
15 yet, if I remember correctly, so that would be my answer.

16 Q. Okay. What was your understanding about
17 any sort of fiduciary duty at that time?

18 MR. CULOTTA: I am going to object. It calls
19 for a legal conclusion. She's obviously not an
20 attorney.

21 MS. BELLER: She is not an attorney, but
22 she did hold a board position, and she should have an
23 understanding of what a fiduciary duty is. Her own
24 understanding, not a legal conclusion.

25 MR. CULOTTA: That's fine. To the extent

1 that she understands, she can answer.

2 A. Well, it's making sure that we do what is
3 best for the association, and especially in the areas of
4 finance, and make the right decisions there.

5 Q. Any sort of loyalty owed?

6 MR. CULOTTA: Same objection.

7 Q. Do you believe there's any sort of loyalty
8 that's owed to -- did you owe loyalty to the association,
9 or did you owe a loyalty to the developer?

10 A. Well, I would say we were trying to work
11 out the transition for the association, so my -- I mean, I
12 was thinking, and would have been thinking, in that
13 direction probably, because we wanted the best -- or in
14 the best interest of the homeowners association.

15 Q. Okay. When were you first elected to serve
16 on the board after the transition?

17 A. After -- I think that transition lasted a
18 year. We had an election, and it was during the
19 transition we decided on a nine-member board, with going
20 three years in rotation. And the way that worked -- I
21 cannot tell you the date, but the way it worked, the top
22 three vote-getters would serve the longest term, and then
23 that was determining how it would go from the next three.
24 I was one of the top three voted, and I had a three-year
25 term after that time.

1 Q. Okay. Were you re-elected to serve on the
2 board?

3 A. I was.

4 Q. Okay. So I guess I have a question. You
5 denied -- and I don't know if it was just some sort of
6 error -- for lack of sufficient information.

7 Our allegation in paragraph four was that
8 Defendant Sharon Chandler, individually, at all times
9 relevant to this Complaint, was an individual elected to
10 serve as a board member of The Harbours Condominium
11 Association, Inc. Is that, in fact, a true statement?

12 A. Read that again, please.

13 Q. Here. I'll let you read it. Right there,
14 paragraph four.

15 A. Yes, I was up until December.

16 Q. Okay. I thought it was probably just a
17 little error.

18 Now, did the board have -- at the time you
19 started out as a board, the developer was out of the
20 picture. Did the board have discussions about what their
21 fiduciary obligations were?

22 A. I don't remember that. That's about been a
23 long time ago.

24 Q. Okay. Would you agree with the statement
25 that as a board member you should have a familiarity with

1 the governing documents of the association?

2 MR. CULOTTA: I'm going to object. Leading
3 question.

4 MS. BELLER: It's a deposition.

5 MR. CULOTTA: It's still a leading
6 question.

7 Q. Do you think it's your requirement to
8 know -- what would you need to know in order to be an
9 effective board member?

10 A. I felt like I -- or I feel like I'm
11 familiar with the -- I don't have them memorized, but I --

12 Q. And no one would expect you to.

13 A. But I have certainly read them and been in
14 discussions.

15 Q. And you know they have amendments to them?

16 A. Yes, I do.

17 Q. And you have seen the amendments?

18 A. Yes.

19 Q. Okay. Are regular minutes taken at board
20 meetings?

21 A. Yes. At board meetings, but not at
22 executive meetings.

23 Q. Where the door is closed?

24 A. Uh-huh.

25 Q. Okay. Who usually takes those?

1 A. Secretary.

2 Q. The secretary. Once the minutes are taken
3 at one meeting, at the prior meeting are they then
4 approved in some fashion?

5 A. They are approved. That's one of the first
6 things on the agenda.

7 Q. So as a member of the board, you can rely
8 on the minutes as being accurate?

9 A. Well, we have a discussion. We approve
10 them, so if there is a problem a member would object to
11 something, and we would discuss it and it could be
12 changed.

13 Q. Okay. But if they are approved, then you
14 can rely on what's in them?

15 A. Yes.

16 Q. Okay. What officer positions have you held
17 as a member of the board?

18 A. Treasurer.

19 Q. Treasurer. How long have you been the
20 treasurer? I know you are no longer on the board.

21 A. Well, of the terms that I served.

22 Q. Oh, you have been a treasurer since your
23 first election?

24 A. Uh-huh.

25 Q. Who nominated you? Do you recall?

1 A. I cannot remember that.

2 Q. What was your understanding of your duties
3 as treasurer?

4 A. I would oversee the financials and sign
5 checks, and approve the invoices. I went through every
6 invoice each -- every two weeks, or maybe more often,
7 depending on what the situation was.

8 Q. Okay. Can you describe your monthly
9 activities as the treasurer?

10 A. It seems like on a weekly basis I would go
11 down -- the manager or the assistant manager would leave
12 the invoices, all the bills that came in, and I would take
13 them and I would go through them. And we had a system of
14 checks and balances.

15 Not only did I do that, but I think they
16 were initialed by three -- probably three other people
17 before the checks were ever even written. I probably was
18 the first one to do it.

19 If there was a bill that came in that we
20 didn't know -- and mainly maintenance, I think, would buy
21 something that we would have to make sure what it was for,
22 so the accountant could apply that to the right account,
23 and I would check with the maintenance. For example, if
24 they bought pipes or something, was that for the common
25 areas, was it for another homeowner. If it was, then they

1 would be charged for that. We wouldn't put that in with
2 the checks to be written. I did that on a weekly basis.

3 And then after I did it, it was turned over
4 to maintenance, and he went through them, and he would
5 initial it. And then after that the -- and sometimes she
6 did it first, but usually -- after the manager would check
7 off on something. If it was office supplies, the
8 assistant manager was responsible for ordering and
9 taking -- so she would okay those, initial them.

10 So by the time the checks were written,
11 they had probably been okayed by four people.

12 Q. Okay. For some clarity, the person who
13 was -- during the majority of the time that you served as
14 the treasurer, the person who was the office manager, was
15 that [former property manager]?

16 A. It was.

17 Q. And the person you referred to as the
18 assistant?

19 A. [Former office assistant]. And has been for several
20 years. Before that, a young man by the name of [former office
21 assistant]. I think maybe other people have, but I don't
22 remember. I couldn't give you names.

23 Q. Okay. Who handled payroll?

24 A. That was handled by [former property manager], the
25 property manager.

1 Q. Okay. And how was payroll done?

2 A. Our employees -- staff, had a payroll log
3 that they kept daily, in addition to putting down their
4 duties that day, what they did. And then [former property
5 manager] took care of the -- I only did it when -- [former
6 property manager] was off for a period of time for surgery,
7 several weeks, and that's the only time I actually handled that.
8 That was -- she would call that in to -- we've had two companies.
9 I think now Paycheck is the company that's doing it. And I don't
10 remember -- I have heard, but I cannot tell you now who the other
11 company was.

12 Q. ADP perhaps?

13 A. I'm not going to say for sure.

14 Q. Okay.

15 A. That sounds right, but that's been awhile,
16 too. And that's probably the company that I called when I
17 did it.

18 Q. Okay. Who supervised [former property manager's]
19 activities?

20 A. Well, my answer would be the board of directors as
21 a whole would be her supervisor, because they were over it.

22 Q. Did anyone carry more of a role than anyone
23 else?

24 A. I don't know.

25 Q. You wouldn't say that the president of the

1 board maybe didn't have more of a role?

2 A. I would say [former property manager] worked
3 closer. As always, the manager works closer with the president,
4 because they have a little more on-site responsibility
5 than the rest of us. I worked pretty closely with [former
6 property manager] also.

7 Q. Okay.

8 A. I am not saying I supervised her, but I
9 pretty much knew what she was doing, yes.

10 Q. Okay. Did anyone assist you in your duties
11 as the treasurer?

12 A. Not at first, but I -- for many years now I
13 have had an assistant. Well, that's not true. I think I
14 have had one all along.

15 The first assistant treasurer was elected
16 or selected from the board to take over my duties when I
17 was out of town or not available. And, as a matter of
18 fact, that's been going on for a long time.

19 But since then, we've always had an
20 assistant treasurer. We have one now, and had one then --
21 or when I was treasurer, I should say.

22 Q. Who were the people that filled that role?

23 A. A gentleman who has passed on. [Former Board
24 Member] was the first one. And then W.T. Roberts is the
25 assistant treasurer, and has been as long as he has been

1 on the board just about.

2 Q. Okay. What's your arrangement with the
3 assistant treasurer?

4 A. Well, we had different duties. I've pretty
5 much told you my duties. I, at first, checked over the
6 monthly printouts that we had, as far as paying credit
7 cards and checks and so forth.

8 The assistant did the bank re- -- you know
9 what I'm trying to say. Reconciliation is the word I'm
10 trying to get. He did those. And depending on how busy I
11 was, he would at times go over the other things, too.

12 And he also was under the direction of [former
13 property manager], doing the -- signing off on the payroll logs
14 and checking that before she turned it in.

15 Q. So [former property manager] had the assistant
16 treasurer review her payroll logs; is that what you're telling
17 me?

18 A. (Affirmative nod). He also made deposits.

19 Q. Okay. Well, can you give me an audible yes
20 or no whether that was correct?

21 A. I'm sorry. Yes.

22 Q. Okay. Because she doesn't pick up the nods.

23 I'm sorry, you were saying something.

24 A. I just said that he took the deposits, for
25 convenience, to [former office assistant]. He would run them to

1 the bank and make deposits.

2 Q. Okay.

3 A. I would do that at times, but he did it
4 more often. He was retired; I was working.

5 Q. When did you become a real estate licensee?

6 A. I retired in '05, and it was after I
7 retired that I took the class. I forgot to mention that
8 in my education. I did attend Ivy Tech University --
9 college, I guess it is, and I took my professional
10 licensing class at Ivy Tech.

11 Q. Now, are you a licensed salesperson?

12 A. I do.

13 Q. And you'll be transitioning to broker?

14 A. I will.

15 Q. Okay. Now, you've been on the board since
16 2005 officially; is that correct?

17 A. Yeah.

18 Q. Well, you are no longer --

19 A. Yes.

20 Q. How long has Kevin Zipperle been on the
21 board?

22 A. Same as I have. He still is on the board.
23 We were both on the transition board.

24 Q. How did you meet Kevin?

25 A. I knew him before, and knew his wife just

1 as neighbors, passing each other in the hall and talking,
2 but I did not know him before I moved there.

3 Q. What would you describe your relationship
4 as now?

5 A. Kevin is a friend, someone I respect.

6 Q. Do you do things socially, or have you
7 ever?

8 A. Well, I think we've gone out to eat. I
9 know we have gone out to eat. Basically, that's all.
10 They attend ball games, but I don't. That's their hobby.

11 Q. And how long has Mary Lou been on the
12 board?

13 A. Same.

14 Q. Okay.

15 A. Mary Lou went off in December like I did.

16 Q. Okay. How did you meet Mary Lou?

17 A. I think I probably met her during the
18 transition board period.

19 Q. And how would you describe your
20 relationship with her?

21 A. A friend.

22 Q. Have you done social things with her?

23 A. Well, I'm sure I have. And as with all of
24 them, we have gone to lunch, several of us. We don't do
25 it as much now. We have what we call a lunch bunch, and

1 we have been to -- and we have done that on a monthly
2 basis, as well as with the Zipperles.

3 Q. Okay. How many board meetings would you
4 say you've attended together?

5 A. I would say most of them.

6 Q. Over -- would it be over an eight-year
7 period, twelve?

8 A. Most of them, except when I was working,
9 I -- if they had to meet during the day, I couldn't make
10 it. I missed those, but I have been pretty much in
11 attendance unless I have been out of town.

12 Q. Okay. Have you worked on any special
13 projects or committees with either Kevin or Mary Lou?

14 A. I'm sure I have. I was on the finance
15 committee with them. I'm not sure if it was the same time
16 or not.

17 I helped Mary Lou, I think, work on the
18 social committee. I think that's what it was called, but
19 planning events, get-togethers, pool gatherings, Christmas
20 parties, and I would help with that occasionally.

21 Q. Okay. Do you believe you know Kevin and
22 Mary Lou well?

23 A. Yes, I do.

24 Q. Okay. Then perhaps you can shed some
25 light. You denied question number 20, which is:

1 Zipperle, Trautwein-Lamkin and Chandler have a
2 well-established association as board members. What's the
3 basis of your denial on that?

4 A. I don't -- read that again. I can't see
5 it.

6 Q. Zipperle, Trautwein-Lamkin and Chandler
7 have a well-established association as board members.

8 A. I'm not sure what a well-established
9 association would be, but we were familiar with the board.
10 We were...

11 Q. As board members -- you had been board
12 members for a long time, right?

13 A. Right.

14 Q. Usually when something is well-established
15 it's a long time, and you have been associated as board
16 members for a long time. Would you agree with that
17 statement?

18 MR. CULOTTA: Well, let me interject an
19 objection here. Given the fact that, obviously, it sounds
20 like you all have two separate definitions. If you will
21 define what you mean by well-established there, then she
22 can perhaps try to answer whether or not she agrees or
23 disagrees.

24 Q. Okay. By saying well-established, you've
25 been to several -- at least 100 board meetings together

1 maybe, you've been out to eat, you've discussed Harbours
2 business for a long time, for a lot of years, and you've
3 been together associated as board members. Would you
4 agree that that's a true statement?

5 A. We have been out to eat, but when we do
6 something socially we're usually with a larger group, and
7 we are not necessarily discussing Harbours.

8 Q. But you've been together as board members
9 for a long time?

10 A. We have, yes.

11 Q. Okay. So when I say it's a
12 well-established association, you've been board members
13 since the very beginning?

14 A. (Affirmative nod).

15 Q. And up until this last election -- she's
16 shaking her head yes. You need to make sure --

17 A. Yes.

18 Q. I am not always good at that.

19 Up until this last election, the three of
20 you have always been on the board; is that correct?

21 A. That is correct.

22 Q. Okay. I'm not going to belabor this.

23 We've met before this; is that correct?

24 A. Yes.

25 Q. Do you recall how many times that we've

1 met?

2 A. Three prior to today, would be my guess.

3 Q. Okay. And the first time we met was, I
4 believe, in Indianapolis?

5 A. That's correct.

6 Q. Okay. The second time we met, it was when
7 we came and met with the Harbours board; is that correct?

8 A. Yes, it is.

9 Q. And why were we meeting with you at that
10 time?

11 A. Actually, I think I invited you to come
12 down to -- I wanted you to see our property and see how
13 well maintained it was, and meet our board. That was my
14 objective, and I did invite you that day.

15 Q. Yes. Do you recall how the attorney
16 general's office became involved in the Harbours? Do you
17 recall why we told you that there was an investigation?
18 Let me just -- do you recall being informed there was an
19 investigation?

20 A. I don't think -- well, I -- you know, it's
21 really hard for me to remember. I'm trying to remember
22 when I came up there, if it was -- I know you had called
23 and wanted to speak to me, and I was -- you were going to
24 come here, and I was going to be out of town, and in order
25 to accommodate you, I came up there earlier. I remember

1 that. I don't -- it had -- what's your question?

2 Q. My question is, do you recall the attorney
3 general's office having an investigation, being told that?

4 A. I don't recall that, I'll be honest with
5 you. But it had to have been if I...

6 Q. Okay. Do you recall receiving copies or
7 seeing copies of consumer complaints that had been filed
8 with the office of the attorney general?

9 A. I have seen them, and I more than likely --
10 that was probably the reason that...

11 Q. Okay. You're familiar with Doug Farnsley;
12 is that correct?

13 A. I am.

14 Q. And are you familiar with him responding on
15 behalf of the Harbours to the attorney general's office?

16 A. He was chairperson of our legal committee,
17 and probably...

18 Q. Okay.

19 A. He probably was the one that responded, and
20 I do remember that, but the specifics -- it may come back
21 to me if I see those.

22 Q. Okay. I am showing Ms. Chandler a copy of
23 a consumer complaint from Sheila Rudder, Marsha Hall
24 Craig, Dennis Stone. And some of these complaints are
25 against Sharon Chandler, against Kevin Zipperle, against

1 the board in general, against [former property manager].
2 This is Dennis Stone. Another consumer complaint from Barry
3 Gates.

4 MR. CULOTTA: Do you have a specific
5 question?

6 MS. BELLER: Yes.

7 Q. The specific question is -- on Number 17,
8 the OAG received numerous complaints from HOA members
9 regarding several issues, including numerous allegations
10 against Zipperle, Trautwein-Lamkin and Chandler for breach
11 of their fiduciary duty and self-dealing. And many of
12 those documents actually use those words.

13 MR. CULOTTA: Is there a question?

14 Q. The question is, why was that -- why did
15 you deny 17? What is the basis of your denial?

16 MR. CULOTTA: I think she has already --
17 it's been asked and answered. She didn't recall.

18 A. Well, I wasn't sure --

19 MR. CULOTTA: Well, the question was do you
20 recall?

21 Q. Do you recall it now?

22 A. I knew that there were complaints. I
23 didn't -- I mean, there have been so many, that I wasn't
24 sure exactly which ones you were talking about.

25 Q. Okay. Well, here is the response that

1 Mr. Farnsley wrote to the attorney general's
2 investigation. Would your answer be different now?

3 MR. CULOTTA: Different answer to what
4 question?

5 Q. To 17. The OAG received numerous
6 complaints from HOA members regarding several issues,
7 including numerous allegations against Zipperle,
8 Trautwein-Lamkin and Chandler for breach of their
9 fiduciary duty and self-dealing.

10 MR. CULOTTA: For the record, the response
11 says Defendants deny the allegations contained in
12 Paragraph 17 of the Complaint for lack of sufficient
13 information to testify to their belief therein. It's not
14 an exact denial, a direct denial.

15 MS. BELLER: Okay. But now she has
16 sufficient information of copies of documents that were
17 provided to The Harbours pursuant to attorney general
18 policy.

19 MR. CULOTTA: Well, but she has -- you've
20 not established that she actually saw those.

21 MS. BELLER: She said when she came to
22 Indianapolis, she came because there was --

23 Q. Well, you came to Indianapolis because
24 there was a complaint against your real license; is
25 that --

1 A. That's what it was, yes.

2 Q. Okay.

3 A. Exactly.

4 Q. Okay.

5 A. That's where I was confused.

6 MR. CULOTTA: Wait for her to ask the
7 question.

8 Q. Okay. So Number 18, the OAG engaged in an
9 investigation of the allegations contained in the consumer
10 complaints. That's why we were down there at The Harbours
11 at that board meeting, and I explained to everyone there
12 we were investigating these complaints.

13 MR. CULOTTA: Is that a question?

14 Q. I'm saying, would you change -- I mean,
15 that's the truth of what happened there, isn't it? I
16 don't understand how you can deny that for lack of
17 information.

18 MR. CULOTTA: Well, wait a second. Again,
19 the question is -- received numerous complaints regarding
20 several issues, including numerous --

21 MS. BELLER: Well, I moved down to 18, too.

22 MR. CULOTTA: I guess if you want to ask
23 her a question, whether or not she knew there was an
24 investigation.

25 Q. Did you know there was an investigation

1 going on regarding The Harbours?

2 A. I knew there was an investigation. The
3 dates I was confused about, because I -- I really didn't
4 realize this was -- set of papers was in the works at that
5 time. I thought it was -- I didn't realize it was a short
6 period of time. I thought we were talking about the real
7 estate complaint. And I knew about this, but I thought it
8 came later.

9 Q. Okay. It all kind of came at once, over
10 time.

11 A. It did. And I --

12 MR. CULOTTA: Just wait for her to ask the
13 question.

14 Q. Okay. We have already discussed the fact
15 that you have a salesperson license?

16 A. Yes.

17 Q. And you'll be transitioning to a broker?

18 A. Yes.

19 Q. What sort of duties do Indiana real estate
20 licensees have to their clients?

21 MR. CULOTTA: I am going to object. What
22 is the relevance to this particular proceeding?

23 MS. BELLER: The relevance of me discussing
24 her real estate license?

25 MR. CULOTTA: The relevance of what

1 responsibility she has to clients.

2 MS. BELLER: Because I'm gaining her
3 understanding of what she understands to be a real
4 estate -- she is a real estate licensee. She is the
5 preferred broker of The Harbours.

6 MR. CULOTTA: Well, she's not a broker.
7 She's the employee of a broker.

8 MS. BELLER: Well, but she serves in that
9 function.

10 Q. How many listings do you have active now?

11 A. Probably seven.

12 Q. Okay. Where do you list your properties?

13 A. I have most of them at The Harbours, but I
14 also have a listing in New Albany.

15 Q. Okay. But the majority of your --

16 A. Yes.

17 MS. BELLER: It's very relevant. So she
18 does a lot of business at The Harbours, and she has an
19 understanding of the building.

20 MR. CULOTTA: Okay.

21 Q. So what sort of duties do Indiana real
22 estate licensees have to their clients?

23 A. I need to -- I want to represent the buyer
24 and/or the seller in the best way possible. I make -- I
25 represent them, and I try to work very fairly with them.

1 Q. Do you owe them a fiduciary duty?

2 A. Yes.

3 Q. Okay. Do you owe a duty of candor to the
4 seller? For example, what I mean by that is -- or to the
5 buyer. If you are representing the seller, you have a
6 duty to be candid about --

7 A. Well as --

8 MR. CULOTTA: Wait for her question.

9 Q. -- candid with regard to anything they ask
10 regarding the property? You have to give disclosure?

11 A. Yes.

12 Q. Okay. Now, we have discussed, you are the
13 preferred realtor at The Harbours?

14 A. That's not exactly true. I work for the
15 company that is the preferred company provider of real
16 estate. It could be any one of the real estate agents
17 that work for this company.

18 I just happen to live there, I know more
19 people, and I am very familiar with the building, and --
20 but it's the company that is the preferred provider, not
21 me.

22 Q. But at the time we interviewed you in
23 Indianapolis regarding this, did you tell us that the
24 telephone rang -- you had a separate line that rang?

25 A. That is one of the advantages of having the

1 preferred provider status with my company. My company
2 pays for that telephone line.

3 Q. Okay. How many other realtors from your
4 company sell property there at The Harbours?

5 A. I know of two that I could name right off
6 the bat. I have others that come in that show property.
7 And actually more than two I could tell you about.

8 Q. What's the arrangement The Harbours has
9 with the preferred realtor?

10 A. The arrangement originally was we were
11 going to hold open houses two times a week, and every
12 other Sunday. And then the telephone line and -- there's
13 a -- they arranged to have a discount for -- it was
14 arranged -- it was set up as a service to the homeowners,
15 hopefully. And that was the reason that we -- and I had
16 nothing to do with that. That was all arranged prior to
17 my joining the company.

18 Several of the property managers met with
19 the real estate -- my broker -- the broker at that time,
20 and then they set up these -- the guidelines.

21 Q. Let me look back here. You have said you
22 got your license in --

23 A. Probably.

24 MR. CULOTTA: Just wait for the question.

25 Q. Was it in 2005 or '06?

1 A. Somewhere in that neighborhood. I did not
2 have it when I retired.

3 Q. Okay. And so you retired in --

4 A. 2005.

5 Q. So since that time, have you been working
6 for the preferred realtor at The Harbours?

7 A. After I got my license, I affiliated with
8 that company.

9 Q. Okay. And at that time they were the
10 preferred realtor at The Harbours?

11 A. Yes, they were.

12 Q. And at that time did they put the telephone
13 line in your apartment at the time --

14 A. It's not --

15 Q. -- at the condominium?

16 A. It's a line that's just programmed. It was
17 not necessarily mine. We worked with other people, and
18 they would -- I think it was on a weekly basis, and that
19 line would be transferred to another real estate agent.
20 It's done in the office.

21 Q. Okay.

22 A. And it was just done on a weekly basis, or
23 whoever was -- I'm trying to think whoever was going to be
24 doing the open houses that week.

25 Q. Okay.

1 A. But it was two or three different real
2 estate agents.

3 Q. But eventually it just stayed in your --

4 A. It did.

5 Q. Okay. Well, we've established you list
6 property at The Harbours, and that you have listed
7 property -- you have one other listing?

8 A. Yeah.

9 Q. Do you track the sale of condos at The
10 Harbours? Do you have keep abreast of what's moving?

11 A. Yes, pretty much.

12 Q. Okay.

13 A. Not all the time.

14 Q. How much money do you make in
15 commissions -- how much money did you make last year in
16 commissions at The Harbours?

17 A. I think I made [redacted].

18 Q. And what portion of your income does that
19 represent?

20 A. Probably a fourth, maybe.

21 Q. So it's a decent size chunk, would you say?

22 A. Well, I --

23 Q. Would you miss it if it was gone?

24 A. Sure, I'd miss the money. Sure.

25 Q. Sure. Okay. Have you ever given any money

1 to another individual after the sale of a Harbours
2 condominium? Outside of what you would do for your
3 broker, have you ever given money outside?

4 A. No.

5 Q. Okay. Are you familiar with documents
6 known as bulletin number one and bulletin number two?

7 A. Yes.

8 Q. Okay. When did you first become familiar
9 with them?

10 A. When they were written. Whatever that date
11 is on there.

12 Q. How did you become familiar with them?

13 A. As a board member, I heard discussions
14 about that.

15 Q. Okay. Did you receive any kind of an
16 e-mail with them attached?

17 A. I don't remember exactly.

18 Q. Okay. If I were to show you -- this is
19 what is marked as Exhibit AA, which is attached to the
20 State's Complaint.

21 Was your e-mail address on March 9th, 2009,
22 schandler1@aol.com?

23 A. Yes.

24 Q. Do you recall receiving that e-mail?

25 A. I have seen this, yes.

1 Q. Do you recall reviewing either bulletin
2 prior to?

3 A. I'm sure I did, if we were sent the
4 document to read and approve.

5 Q. Okay. Do you know what prompted the
6 document to be written?

7 A. Yes. There were several questions about
8 those two -- that pertained to those by so many people.
9 It was decided that they would write that so that it could
10 be -- so that whomever was having questions, they could
11 read the explanation for it.

12 Q. Okay. Do you know who wrote bulletins
13 number one and two?

14 A. Yes. Kevin Zipperle wrote -- I think it
15 was both number one -- I could have these reversed. [Former
16 property manager] wrote most of the other one, I think.

17 Q. Do you recall what conversations you had
18 regarding these bulletins?

19 A. In a board meeting it was --

20 Q. Anywhere.

21 A. That's the only --

22 Q. Did you have a conversation with [former property
23 manager] regarding these bulletins?

24 A. I don't recall that.

25 Q. Did you have a conversation with Kevin

1 Zipperle regarding these bulletins?

2 A. I don't recall that.

3 Q. Did you have a conversation with any other
4 board member regarding these bulletins?

5 A. Only at a board meeting. I'm sure it came
6 up at a board meeting and it was discussed.

7 Q. Do you recall anything having to do with
8 the discussion?

9 A. No.

10 Q. Did you take any actions to verify the
11 truth of what was contained in bulletins number one and
12 number two?

13 A. I assume that if Kevin Zipperle wrote it,
14 and he is the one that was involved in it, that it was
15 true.

16 And the same way with [former property manager].
17 If -- I think [former property manager] probably -- if I'm -- I'm
18 not remembering everything that is on there, but I think she
19 dealt with it, and more than likely researched it.

20 Q. Okay. So if Kevin tells you something, you
21 just rely on it as being accurate; is that correct?

22 A. No, that's not correct.

23 Q. Okay. Because that's what I thought I
24 heard, you know.

25 A. No. He was involved in that personally,

1 and he was the only one that could write bulletin number
2 two, or number one, whichever one it was.

3 Q. Did you find it strange that he -- that the
4 exchange went on that's described in bulletin number one.
5 Let's look at it for a minute. I'll just read part of
6 this, and you tell me what you know to be true. What you
7 know to be true.

8 Prior to the developer declarant
9 liquidating his Harbours property, he had often allowed
10 the association to use one of his condos without
11 compensation for meetings and functions. Is that correct?

12 A. That is true.

13 Q. And typically the condo would be an
14 upmarket penthouse unit. Did he use the penthouse?

15 A. Yes.

16 Q. Okay. Which homeowners often would comment
17 how nice it would be able to use those for occasions, and
18 having a permanent space would be advantageous. Is that
19 correct?

20 A. Yes.

21 Q. In 2006, the president of the association,
22 Kevin Zipperle was approached with a proposal from the
23 developer who is in discussions with the homeowner about
24 the sale of one his remaining condos.

25 So do you know if, in fact, the developer

1 approached Kevin?

2 A. I wasn't there. I mean, that's hearsay. I
3 mean, that's been said before.

4 Q. Okay. It says the developer was aware of
5 the association's interest in community space, and to that
6 end the developer wanted the association to consider
7 purchasing the homeowner's condo which had a spacious
8 floor plan similar to a penthouse unit.

9 Now, are you familiar with that condo
10 that's being referred to?

11 A. Yes.

12 Q. What condo is that?

13 A. 312.

14 Q. Now, was that condo ultimately combined
15 with Mr. Zipperle's current condo?

16 A. No. It was a combination of two
17 different -- it was already combined.

18 Q. Okay.

19 A. It was two condos, but it was 312 and 313.
20 311 has never been combined.

21 Q. Okay. So is that combined with Zipperle's
22 now?

23 A. Yes.

24 Q. Okay.

25 A. No. No, not 311.

1 Q. Okay. And then as added value, he was
2 willing to include eight parking spaces to offset the
3 condo purchase and renovation costs.

4 What does that mean to you, that the
5 developer is willing to include eight parking spaces to
6 offset the condo purchase and renovation cost?

7 A. He had apparently suggested that -- or
8 thought it would be a good place for a community condo
9 where people could use it. And in order to do that, they
10 would need extra parking places if outside guests came in.

11 Q. Okay. But what about this part that says
12 he was willing to include it to offset the renovation
13 costs?

14 MR. CULOTTA: Is your question what does
15 that mean to her?

16 Q. Yeah. What does that mean to you? What is
17 your understanding of that statement?

18 A. Well, because it was going to cost more
19 than what he was charging for the condo originally, and it
20 would take more money to renovate it, and that would -- by
21 having those parking places...

22 Q. But does it give the impression that you're
23 paying extra for the parking spaces?

24 A. No. No, I don't think it does.

25 Q. They are included?

1 A. There they are included, yes.

2 Q. Okay. These parking spaces were from the
3 inventory that the developer had for sale and were
4 regularly advertised by his marketing staff to homeowners.
5 Okay. We don't need to go on with the rest of it.

6 Now, did the board take any action and say
7 Kevin, we want you to get us this space for a community
8 space?

9 A. Well, I think it has been talked about for
10 a long time that we wanted a community space. And we
11 either needed to do something different, like take the
12 business center and make that one, or build on, or
13 something.

14 Q. Did the board take an action telling Kevin
15 Zipperle to negotiate with the declarant to make this
16 deal?

17 A. I don't know.

18 Q. If I can't find anything in the minutes, is
19 it likely it didn't happen?

20 MR. CULOTTA: Object. Calls for
21 speculation. I think she has already asked and answered
22 the question.

23 Q. Okay. So were you privy to any of the --
24 regarding bulletin number one, we know that Kevin Zipperle
25 and Gary Davis were involved in these transactions?

1 A. (Affirmative nod).

2 Q. You are nodding yes.

3 A. Yes.

4 Q. Okay. My understanding is Gary Davis was
5 buying a condominium from the developer, which is the
6 eleventh floor condo that he has now; is that correct?

7 A. Yes.

8 Q. Okay. And Kevin was buying Mr. Davis's
9 number 312; is that correct?

10 MR. CULOTTA: If you know.

11 A. Well, I don't know if you could say was
12 buying. I think they were negotiating.

13 Q. Does Kevin own 312 now?

14 A. He does.

15 Q. So he bought it at some point?

16 A. He did.

17 Q. Okay. Did you review any of the contracts
18 between Mr. Davis and --

19 A. No, I didn't.

20 MR. CULOTTA: Wait for the question.

21 Q. -- Mr. Davis and the developer?

22 A. No.

23 Q. And you didn't review any of the contracts
24 between Kevin and Mr. Davis?

25 A. No. Those were -- I mean, that was out of

1 the realm of board duties. I mean, it was two...

2 Q. But even though that's what -- this
3 bulletin number one, and I don't think I am paraphrasing,
4 this was going to be given to homeowners that raised
5 questions about this purchase?

6 A. Yes.

7 Q. And what did you think about those
8 homeowners?

9 MR. CULOTTA: What homeowners?

10 A. Okay. The homeowners that were raising
11 questions about the activities described in here, what did
12 you think of those homeowners? What was your personal
13 opinion of them?

14 MR. CULOTTA: Do you have any specific
15 people in mind that you can reference that she can...

16 Q. Well, the list of people that I'm assuming
17 that are on our -- the list we just discussed, Ms. Sheila
18 Rudder, there's Betty Cantrell, there's Marsha Hall Craig,
19 there is -- were these some of the same people that were
20 raising questions about --

21 MR. CULOTTA: I am going to object to the
22 extent that it hasn't been established that they were
23 making complaints about that.

24 MS. BELLER: Yes, it has. We established
25 that earlier, when I asked her how these bulletins came to

1 be written. She said it was because people had raised
2 questions regarding the activities in bulletin number one
3 and bulletin number two.

4 MR. CULOTTA: But you haven't identified
5 who it was that was raising those complaints.

6 Q. Who were raising those complaints?

7 A. I don't know. I just knew there were
8 people that were asking. And I am not necessarily saying
9 it was Sheila, et cetera. As I understand it, it was
10 written to enlighten anybody that would ask. I don't know
11 that.

12 I need to clarify something, but I would
13 have to go back to --

14 Q. Sure.

15 A. -- your question about approving this
16 bulletin. Well, never mind. It will probably come up
17 again. I'm not sure that I have answered that question
18 correctly. Well, not correctly, but agreed.

19 Q. Have you had an opportunity to review the
20 State's Complaint?

21 A. Yes.

22 Q. Now, would you agree it describes facts
23 differently than what's contained in this bulletin?

24 MR. CULOTTA: I'm going to object to the
25 extent that it's leading.

1 Q. What's your opinion? Are they the same?

2 A. I would have to look at the State's
3 Complaint before I could answer that. I'm not sure what
4 exactly the wording is.

5 Q. Okay. Well, for example, it doesn't
6 discuss -- this bulletin doesn't discuss that the second
7 contract included a condition for an additional \$40,000,
8 eight parking spaces would be conveyed to Kevin Zipperle
9 by the developer?

10 A. But they paid more --

11 MR. CULOTTA: Wait. Is there a question?

12 Q. Yeah. I mean, what's the difference? She
13 asked for a better explanation as to -- there is no
14 indication that \$40,000 was paid for these parking spaces.

15 A. Your question?

16 Q. Is that the truth? In this bulletin?

17 A. That's not the bulletin.

18 Q. Oh, I'm sorry.

19 A. I'm thinking this was in regards to a
20 community room. When it came -- when Kevin actually
21 bought it, he bought it because it was not going to be a
22 community room anymore, and those parking spaces were an
23 addition at that point. Kevin paid more for the condo
24 than what he was asking, if I'm not mistaken. I think
25 that's why he paid more. I thought it was 300 -- I

1 thought it was less than this if the association bought
2 it.

3 Q. Okay. So you really don't understand the
4 underlying contracts underneath this bulletin number one?
5 You have never had the opportunity to review them; is that
6 correct?

7 A. You mean the actual purchase contract?

8 Q. Yes.

9 A. No, I have not. No. But I'm assuming that
10 things changed when the homeowners association voted not
11 to purchase this, and Kevin said if they didn't buy he
12 would at that point.

13 Q. Were you aware that the parking spaces
14 transferred to Mrs. Zipperle prior to that meeting? I can
15 show you the parking space instrument. September, 2006.
16 Yeah, I had it right. That they were --

17 MR. CULOTTA: Did you say September 20,
18 2006?

19 MS. BELLER: September 8th, I'm sorry,
20 2006.

21 Q. That the parking spaces went to
22 Mrs. Zipperle, Deborah Zipperle, the day before -- or
23 maybe not the day before, I think maybe a week before,
24 there was the meeting, the town hall meeting. Do you
25 recall the town hall meeting?

1 A. Yes.

2 Q. Okay. Mrs. Zipperle received the parking
3 spaces prior to the town hall meeting. Did --

4 MR. CULOTTA: Wait a minute. Wait for a
5 question.

6 Q. So that would mean that this transaction
7 was going on before it was even offered to the --

8 MR. CULOTTA: Again, wait for the question.

9 Q. Is that correct? Before it was even
10 offered to the association members, this transaction was
11 being finalized?

12 A. No, I wasn't aware of that.

13 Q. Okay.

14 MR. CULOTTA: And I am going to make an
15 objection. That calls for speculation, because...

16 MS. BELLER: Well, you know, she signed off
17 on a document that --

18 MR. CULOTTA: That document was prepared
19 after the fact. It wasn't contemporaneous to the sales,
20 so therefore it was an explanation given prior -- post --

21 MS. BELLER: To people that they didn't
22 want to answer the truth to, is our contention.

23 MR. CULOTTA: Well, that is argumentative
24 and that's the State's actual substance of their case,
25 not...

1 MS. BELLER: Okay.

2 Q. What's your recollection of the town
3 meeting?

4 A. It was for -- it was held at the hotel next
5 door. It was at the Sheraton, Ramada, Hilton. I'm not
6 sure which one it was.

7 MR. CULOTTA: If I can interject. For the
8 record, which meeting are you referring to?

9 MS. BELLER: There was a town hall meeting
10 held September 12th, 2006. That's the town hall meeting
11 we're discussing.

12 MR. CULOTTA: Okay.

13 Q. Do you recall that meeting?

14 A. Yes.

15 Q. And what do you recall about that meeting?

16 A. It was for the -- the primary purpose of it
17 was to explain -- we were given a bulk package with
18 Insight for TV and Internet services, and it was to
19 explain that.

20 And at that meeting, Kevin explained or
21 presented this condo purchase to the homeowners that were
22 present. He told the benefits, and then some of the
23 reasons that -- the pros and cons of having -- or making
24 this purchase. And he had a show of hands, and there was
25 not enough in favor of it to go on with it.

1 And he told them -- and I remember that --
2 he did say, if you do not take this -- I will give you the
3 opportunity to do this first, but if you do not, I am
4 buying it.

5 Q. Okay. How many homeowners were at that
6 meeting? Do you recall?

7 A. I don't remember. There is usually about
8 40, 50.

9 Q. Okay. What would 40 represent
10 percentage-wise of the voting population of The Harbours?

11 A. Probably 25 percent.

12 Q. So it's a really --

13 A. That may be low.

14 Q. Kind of a small sampling?

15 A. That's the attendance that we have, yes.

16 Q. But certainly not a majority, as defined by
17 the bylaws?

18 A. No.

19 Q. Okay. Now, you also are familiar with
20 bulletin number two; is that correct? We have been
21 primarily talking about the parking spaces.

22 A. I have seen this, yes.

23 Q. So did you just believe this to be the
24 truth as well?

25 A. Yes.

1 Q. Do you believe you can rely on it for
2 accuracy?

3 A. I do. As I recall, [former property manager] had
4 done the research on this and wrote it. No reason this -- it
5 wouldn't have been accurate, in my opinion.

6 Q. So you just relied on [former property manager]?

7 A. Well, I would have to. I don't remember
8 all of that otherwise, but I knew she did the research on
9 it, and she...

10 Q. Do you recall a marketing agreement with
11 the developer?

12 A. Yes, somewhat. I may not be able to recall
13 exactly, but I do remember one.

14 Q. Do you recall what the terms were at all?

15 A. Well, it -- this all goes back to our balcony
16 railings. We had had a problem with the paint on them, and
17 [former property manager] was working with the developer to
18 get some compensation for that. I think he went back to the
19 painter and they tried something, two or three things, and
20 nothing seemed to adhere to this balcony railing.

21 And to compensate for that, he offered a
22 deal to the homeowners association that he had parking
23 places that were not sold at that time. And he made an
24 agreement that first -- I can't remember how many, but the
25 first ones that were sold -- I think he had a list of --

1 they were designated parking places, that the association
2 would get a percentage of the sales for that. I think
3 that's the reason -- I mean, that's the marketing plan.

4 And then there was a second part to that,
5 too. I don't recall that exactly.

6 Q. Okay. Well, let me ask you, at the time
7 that this marketing plan was coming to be done, had the
8 developer sold all of his condominiums in the building?

9 A. Probably. Well, he still had the -- I
10 think he still had the 1110. The big one had not sold at
11 that time.

12 Q. Is that the one that Davis bought?

13 A. Yes, it is.

14 Q. Because this is after.

15 A. It was after?

16 Q. Uh-huh. The marketing plan was after.

17 Did you question whether he could even sell
18 those parking places? He, being the developer.

19 A. Well, if he didn't own any condos there, he
20 had to get -- sell them. I mean, he couldn't own them.

21 Q. Okay. I mean, once you've sold out, you
22 don't have -- you can't be an owner once you don't have
23 the condo, right?

24 A. Of the parking places, yeah, that is true.

25 Q. Okay. So did you raise any concerns about

1 whether this was a good idea or not?

2 A. Well, it was about the only idea in order
3 to get rid of them.

4 Q. So you didn't think that, you know, maybe
5 the developer didn't even have a right to sell? That they
6 were common property at this point?

7 A. I didn't think that.

8 Q. Okay. So I'm showing you what is marked as
9 State's Exhibit M to the State's Complaint, and I'll just
10 turn this around so you can look at it. And take your
11 time.

12 A. Is this what --

13 Q. Yes.

14 A. I do recall what I was trying to say a few
15 minutes ago.

16 MR. CULOTTA: Just wait, please.

17 Q. Okay. You recall seeing this document.
18 What was your understanding of the marketing plan?

19 A. That we would get the first \$30,000 for our
20 balcony rails, and then the remainder -- the ones that --
21 there was specific ones, and then the remainder were to be
22 split 50/50 with the owner -- Allen.

23 Q. Do you recall if they were offered to any
24 homeowners? There is supposed to be a mailing and a
25 sealed bid?

1 A. That did not happen.

2 Q. Do you know why it didn't happen?

3 A. Because the -- it didn't actually -- they
4 dropped the marketing plan. They dropped -- they did not
5 go through with the deal there that they had. It turned
6 out to be with the office and the homeowners association,
7 they were doing it -- trying to help do this, but it was
8 not -- it was more of a hassle to do it this way. Then
9 they had an owner that bought most of them and they didn't
10 have to do that.

11 Q. Mr. Prell is raising his hand, indicating
12 that he bought most of them.

13 MR. PRELL: I thought I bought all of them,
14 though.

15 Q. So the issue with this is, who authorized
16 the office to not follow through with the marketing plan?

17 A. I don't remember. I do remember [former property
18 manager] making up the list and was going to send it out, but
19 then we ran into a -- not we, I am saying she did, with one
20 homeowner that was objecting to not having her -- they
21 were going to put any homeowner that wanted to sell
22 parking places on there, but --

23 Q. I think you are confusing the issues maybe.
24 But there was the website that has the parking places. I
25 am just --

1 A. I think that was before the website.

2 MR. CULOTTA: Wait for --

3 Q. Yeah. I am just talking about this
4 particular marketing plan. Who authorized ignoring it?

5 MR. CULOTTA: I am going to object to the
6 form of the question.

7 Q. Well, you stated that the office decided to
8 disregarded the mailing. Is that what you stated?

9 A. Yes.

10 Q. Who authorized them to disregard the
11 mailing?

12 A. The board probably instructed her to do
13 that, but I...

14 Q. There is a document entitled -- Number N
15 attached to the State's Complaint, which is a document
16 entitled Board Actions Taken in Lieu of Meetings. And it
17 talks about joint sale of parking spaces owned by
18 declarant, that you all agreed to this marketing plan.

19 If you decided against the marketing plan,
20 would there be a notation somewhere in the minutes that
21 stated that?

22 A. Probably. I don't know.

23 Q. Okay. Are you familiar with a gentleman
24 named Frank Prell?

25 A. Yes.

1 Q. You are. How are you familiar with him?

2 A. I have known Frank for several years. I
3 have actually had his property listed.

4 Q. Okay. Which property listed?

5 A. Well, I sold one. I think it was 917, 918.
6 It was one bedroom. I listed -- another realtor from my
7 company sold another one that he had. I had 1016 and 1103
8 and 04 listed.

9 Q. Okay.

10 A. A couple times.

11 Q. What can you tell me about 1103 and 1104,
12 condominiums 1103 and 1104? Tell me about the
13 condominium.

14 A. It's beautiful, and it's a combination of
15 two condos combined. Two bedrooms. It's about 2700
16 square feet would be my guess, or close to it.

17 Q. Do you know when they were combined?

18 A. No.

19 Q. Did the board give authorization to combine
20 them?

21 A. Not that I know of.

22 Q. Do you know of any building permits being
23 issued?

24 A. I wasn't involved in any of that. I do not
25 know that.

1 Q. So you've explained that you sold -- did
2 you say his ninth floor condominium?

3 A. Yes.

4 Q. And you've listed his tenth floor
5 condominium?

6 A. Yes.

7 Q. And you've listed his eleventh floor
8 condominium at one time?

9 A. Yes.

10 Q. Okay. You denied for lack of sufficient
11 information to justify a belief this paragraph number nine
12 of our Complaint, which is the Defendant Frank Prell,
13 individually, at all times relevant to this Complaint, was
14 an individual who owned multiple condominium units at The
15 Harbours?

16 A. I denied that?

17 Q. Yes. You clearly know that he did, don't
18 you?

19 A. Yes.

20 Q. Okay. Are you familiar with the most
21 recent sale of 1103 and 1104?

22 A. Just what I've read.

23 Q. What you've read. Have you had any
24 conversations at any time with Kevin Zipperle regarding
25 these sales?

1 A. Nothing specific at all, no.

2 Q. Are you familiar with the wall?

3 A. Everybody is familiar with the wall.

4 Q. How are you familiar with the wall?

5 A. Well, I read Facebook, and I see pictures
6 of it.

7 Q. Did you have any discussions with Kevin
8 regarding the wall?

9 A. No.

10 Q. Did you have any discussions -- are you
11 familiar with a woman named Kathy Bupp?

12 A. Yes.

13 Q. How are you familiar with Kathy Bupp?

14 A. She parked in the same vicinity I did.
15 We'd run into each other.

16 Q. Okay. Did you have any conversations with
17 Kathy Bupp regarding the wall?

18 A. I did not.

19 Q. You did not?

20 A. I do not remember that.

21 Q. Maybe about the time did you get a new
22 puppy?

23 A. I did.

24 Q. What kind of new puppy?

25 A. Shih Tzu.

1 Q. My favorite. Not even then you don't
2 recall any --

3 A. Well, I have talked to her.

4 Q. Okay.

5 A. She loves my dog.

6 Q. Okay. Did you get a chance to actually see
7 the wall in person?

8 A. I did not.

9 Q. You did not?

10 A. Just pictures.

11 Q. Okay. So you were aware the wall was
12 constructed?

13 A. (Affirmative nod).

14 Q. Did you think that was an acceptable
15 construction job for The Harbours?

16 MR. CULOTTA: I am going to object. It
17 calls for speculation. She's already said she didn't see
18 it.

19 MS. BELLER: Well, she saw pictures of it
20 on Facebook. I can show you a pretty clear picture.

21 MR. CULOTTA: Let me --

22 MS. BELLER: We can quibble about what you
23 can see and not see.

24 MR. CULOTTA: Well, it also hasn't been
25 established that she's -- I mean, while she's a realtor,

1 she's not a contractor, and what may or may not be
2 substantial or otherwise may be beyond her ability.

3 Q. Is that beyond your ability?

4 A. It's been on Facebook.

5 Q. Okay. Let's describe this. This is
6 between -- it's going in a double basin sink.

7 A. Yes, it is.

8 Q. Okay. Now, are you familiar with the
9 documents -- we've established that as a board member you
10 are familiar with the documents that govern?

11 A. Yes.

12 Q. And this would be an internal change to The
13 Harbours?

14 A. Yes.

15 Q. And it would require a building permit?

16 A. Uh-huh.

17 Q. And were you aware at the time that no
18 building permit was not issued?

19 A. No, I was not aware of that.

20 Q. Were you aware of any stop work order that
21 was issued?

22 A. Only what I've read on -- or I've seen on
23 Facebook that Marty Haley has put on there. But that goes
24 to say that I -- people do internal renovations all the
25 time, and the board doesn't always know about it.

1 Q. Okay. But let's talk about this one. This
2 was very high profile; is that correct?

3 MR. CULOTTA: I'm going to object. Calls
4 for speculation, at least to assume that it was high
5 profile, beyond any others that might have been going on.

6 Q. Okay. There was a board member involved in
7 negotiating for it, so would you say that raised
8 heightened interest among certain people at The Harbours?

9 A. If they -- it probably did, if they knew
10 about it.

11 Q. If they knew about it?

12 A. Yeah.

13 Q. So people were interested in it, and it was
14 on Facebook?

15 A. (Affirmative nod).

16 Q. And, as you've stated, you had seen the
17 condominium -- you had the condominium listed prior to the
18 wall?

19 A. Yes.

20 Q. So what would it take, from your
21 recollection of 1103 and 1104, to redivide this
22 condominium?

23 A. You mean to take the wall down?

24 Q. Well, no.

25 A. Redivide?

1 Q. Yeah, redivide the condominium. It's one
2 big condominium, and you need to make it two. What would
3 you have to do?

4 A. Put up a wall between the two, perhaps,
5 like it was before.

6 Q. Would you need another kitchen?

7 A. Yes.

8 Q. Okay. So it's not going to be two
9 condominiums very easily; is that correct?

10 A. No.

11 Q. Okay.

12 A. I understood.

13 Q. Okay. I understood what you were saying.

14 Are you familiar -- did Kathy Bupp ever
15 mention to you that Kevin offered to sell her condominium
16 1103 and 1104 as soon as she got it?

17 A. She never mentioned that. I never talked
18 to her about this condominium.

19 Q. Okay. Are you comfortable going to 1:00?
20 Do you need a break or anything?

21 A. I'm comfortable.

22 Q. Okay.

23 MR. HANCOCK: I am going to step out and
24 make a call, but you don't need to stop because of me.
25 Frank has got it.

1 Q. Okay. Now, I'm going to ask you, are you
2 aware that Mr. Zipperle was able to purchase 1103 from
3 Frank Prell on short sale? Are you familiar with that?

4 A. Yes.

5 Q. Do you know what happened to 1104? There
6 were two mortgages on it. We'll establish that.

7 A. Uh-huh.

8 Q. Do you know what happened to the 1104
9 condominium?

10 A. I think that one was listed by a real
11 estate agency.

12 Q. Did it go back to the bank? Are you aware
13 of that?

14 A. Oh, I think so. I think it was -- yes.

15 Q. Okay. Now, are you aware that Kevin
16 Zipperle first tried to purchase it from the bank?

17 MR. CULOTTA: I'm going to object. It
18 calls for speculation. You can answer it if you know it.

19 A. I don't know the sequence of events. I
20 wasn't involved in that, and I don't recall the sequence
21 of when...

22 Q. Okay. Let's step back for a second and
23 just do a logic thing here.

24 If you had half a condominium, you would
25 want to get the second half; is that correct?

1 A. That's correct.

2 Q. Okay. So Kevin is in a position where he
3 has 1103, but he doesn't have 1104, and other people are
4 bidding on it. I mean, you don't know that. I'm telling
5 you this.

6 You know Mary Lou, and you know Kevin very
7 well. Is Kevin married?

8 MR. CULOTTA: I'm going to object. It
9 calls for speculation as to the extent of their
10 relationship.

11 Q. Are you familiar with Kevin? Does he have
12 a wife?

13 A. Yes.

14 Q. Okay. Do you know if Mary Lou Trautwein
15 and Kevin Zipperle ever planned to cohabituate?

16 A. No, I don't know that.

17 Q. Can you imagine that?

18 MR. CULOTTA: Object. Calls for
19 speculation.

20 Q. Can you imagine it? I mean, it's thrown
21 out there as speculation.

22 A. No.

23 Q. Well, Kevin owns a lot of property in The
24 Harbours?

25 A. Yes.

1 Q. Would you call him an investor?

2 A. Yes.

3 Q. Okay. Have you ever seen a Fannie Mae
4 owner occupant certification?

5 A. Yes.

6 Q. Okay. I am showing you what is marked as
7 State's Exhibit GG, which is a copy of the owner occupant
8 certification signed by Mary Lou Trautwein-Lamkin and
9 Kevin Zipperle on May 24th, 2012. I would like you to
10 review this document.

11 A. (Witness complies.)

12 Q. Let me ask you this. As a real estate
13 licensee, would you have been comfortable signing the last
14 part, which is the agent's authorization?

15 A. Perhaps that agent -- you know, it's
16 possible that those two families could have lived in the
17 condo. Maybe that's what she thought. I mean...

18 Q. Okay. I'm asking you though. You, Sharon
19 Chandler, who owns a real estate license, would you have
20 been comfortable knowing Mary Lou and Kevin signing this
21 document?

22 A. If I questioned them, and that's what they
23 said they were going to do, I would have been comfortable.
24 But...

25 Q. With what you know today, would you have

1 signed this document?

2 A. I don't think that's the document that
3 ended up as being the final document.

4 Q. This was in the process during the
5 transaction, a piece of it. My question, again, is this
6 singular document --

7 A. Maybe.

8 Q. -- as it's signed, as it is presented
9 today, would you have signed it?

10 A. I'd have to know the circumstances. And
11 perhaps it was signed as whichever one bought it.

12 Q. They are signing together as owner
13 occupants.

14 A. I would still have to know the specifics as
15 to whether -- maybe they planned to share the...

16 Q. But you're their realtor, and you know them
17 now.

18 MR. CULOTTA: I think she's already asked
19 and answered the question.

20 MS. BELLER: I think she's given me every
21 hypothetical around it. She's refusing to answer the fact
22 that...

23 Q. This is deceptive, isn't it?

24 MR. CULOTTA: Objection. Calls for a legal
25 conclusion.

1 Q. As a real estate agent, this is certifying
2 that you're not selling to an investor. And by signing
3 this paper, it allowed him to be the first bidder -- or
4 allowed Mary Lou and Kevin to jump in line of other
5 people. That's how the process works. You said you were
6 familiar with it.

7 A. I would still have to know -- I don't --

8 Q. It's not true today, is it? Mary Lou lives
9 in the condominium?

10 A. Yes, she does.

11 Q. And Kevin doesn't?

12 A. That's correct.

13 Q. And so this was deceptive in its process?

14 MR. CULOTTA: I'm going to object. It
15 calls for a legal conclusion.

16 A. I'm not sure that that was their intent.

17 Q. I didn't ask you what their intent -- their
18 intent was -- well --

19 A. One or the other.

20 Q. The State asserts their attempt was to jump
21 ahead.

22 Would you have handled that transaction
23 differently?

24 A. I wouldn't have handled that transaction,
25 because I know those people. I just would not have wanted

1 to get involved with that one.

2 Q. Why not?

3 A. Well, because we were board members, and
4 knowing the controversy that goes on there, it would have
5 been a lot of criticism and more trouble than it would
6 have been worth.

7 Q. Okay. We've discussed this a couple of
8 times around, that you were present -- were you present at
9 the first meeting of the transition committee?

10 A. Was I present?

11 Q. Yeah.

12 A. Yes, I was.

13 Q. And do you recall if Kevin and Mary Lou
14 were there?

15 A. Yes. Well, I think so.

16 Q. And we discussed the content of bulletin
17 one, that there was an interest in a community room?

18 A. Uh-huh.

19 Q. Do you recall that? Okay. Number 33, our
20 paragraph, it says, since as early as July 16th, 2003, at
21 the first meeting of the transition committee for the
22 transition of The Harbours management from developer to
23 HOA, there have been discussion regarding the possibility
24 of the HOA purchasing a unit as a community or common
25 space area. Is that true?

1 A. Was that on the first meeting?

2 Q. Yes.

3 A. I don't remember.

4 Q. If I showed you the transition committee
5 meeting minutes, would that help? This is exhibit --
6 State's Exhibit C to the Complaint. And it's in there,
7 and it should be -- and it may go to the next page.

8 A. This is what you're interested in.

9 Q. Is that it?

10 A. Yes.

11 Q. Would you say that's true, that it had been
12 discussed since the first meeting?

13 A. If it's in the minutes.

14 Q. You can rely on it?

15 A. I think so.

16 Q. Okay. Now, are you familiar with a website
17 known as www.theharbours.com?

18 A. Yes.

19 Q. Who is responsible for the maintenance and
20 upkeep of the information on the website?

21 A. Well, that's a joint effort in a way. The
22 property manager is the one that I would hold responsible.
23 I contribute to that when I know. As part of the
24 preferred provider status, we're supposed to help keep
25 that updated.

1 However, a lot of times I don't know
2 things. Nobody will inform me -- other realtors,
3 especially those that's selling the building -- I think
4 they have been told if they list there or sell there that
5 they should notify the office. A lot of times they don't.

6 But it has been my place to update it, and
7 I try to do that. I try to document that by putting
8 everything in writing so they can keep it on file. And if
9 something expires, I tell them to take it off. The only
10 way I know is by checking the multiple listing to see if
11 it's still on there. I cross-check those, and when I see
12 something that is expired, or not up there as an active
13 listing, then I tell them to take it off. Individuals
14 that sell their FSBOs call -- well, they won't take it
15 off, but they will be glad to call and let them know to
16 put it on.

17 Otherwise, I think the manager takes the
18 direction from the -- the board meetings that the
19 directors have a lot of times, and makes changes that way.
20 Of course, the end of the year she changes all the
21 officers, and when she has time, she updates it.

22 Q. Are you familiar with parking spaces that
23 are listed on the website?

24 A. Yes. I have looked -- I mean, not too
25 recently. There is not too many of them.

1 Q. Okay. This is a printout. I printed it
2 out myself from the website. It's noted on the bottom,
3 5/17/2013. Does that look familiar as a part of your
4 website format?

5 A. Yes, it looks familiar.

6 Q. Okay. Mr. Prell no longer owns parking
7 spaces in The Harbours -- or owns a condominium at The
8 Harbours; is that correct?

9 MR. CULOTTA: If you know.

10 A. Yes. I will have to think. I don't think
11 he does.

12 Q. Okay. If you are not an owner, you can't
13 have parking spaces there; is that correct?

14 A. That's correct.

15 Q. Do you have any idea why Mr. Prell is
16 listed on there as having parking spaces for sale?

17 A. He probably has some left over. They are
18 assigned to -- I'm not sure. I imagine -- 1016 is where
19 they're assigned. He could possibly be selling them for
20 the owner, and that's the contact number, would be my
21 guess. And I'm guessing.

22 Q. Okay. You've aware of what they call proxy
23 voting at The Harbours?

24 A. Oh, yes. Who isn't?

25 Q. Do you hold any proxies?

1 A. I do.

2 Q. Who do you hold proxies for?

3 A. Do you want individual names?

4 Q. Yes, I do.

5 A. [Homeowner name]. A lady with the name of --
6 the last name of [homeowner name]. I can't recall the first name.
7 [Homeowner name] -- he is my next door neighbor; I should know
8 him -- [homeowner name]. I'm sorry. [Homeowner name]. You
9 probably know those better than me. I can't...

10 Q. No, I've never heard who you held a proxy
11 for. You are not being tested. It's all new to me.

12 A. The trouble is, I can't think of his name.
13 It starts with a G. I can't think of his name.

14 Q. Okay.

15 A. It's a short name. I can see him, but --
16 that could possibly be all.

17 Q. How did you come to hold these proxies?

18 A. I have never asked for a proxy. And I know
19 I have been accused of that in my real estate -- I sell
20 them, and I get the proxies. That is not true. I have
21 never --

22 MR. CULOTTA: Answer the question that's
23 asked.

24 Q. How did you get it, then?

25 A. They've come to me.

1 Q. Did you at any time offer?

2 A. I have offered after they have asked me. I
3 don't have a problem with that, but I don't solicit them.

4 Q. Okay.

5 A. [Homeowner name].

6 Q. N, did you say?

7 A. M.

8 MS. BELLER: I'm going to take just a short
9 break for a moment please, and then we'll come back.

10 (A RECESS WAS TAKEN AT THIS TIME.)

11 QUESTIONS BY MS. BELLER:

12 Q. I would like to go back to three little
13 things here real quick.

14 The first is, back to approving payroll.
15 You said that that was delegated to the assistant
16 treasurer, who is W.T.

17 A. Yes.

18 Q. Under what authority was that delegated?

19 A. [Former property manager], probably more so than
20 me, suggested that he do it. He had more time.

21 Q. Okay. And do you know what he did to
22 approve the payroll?

23 MR. CULOTTA: I'm going to object. That
24 calls for speculation. You can answer if you know, or if
25 you have an answer.

1 A. I don't.

2 Q. Did you have any communications with W.T.
3 regarding how he handled payroll?

4 A. No.

5 Q. You just delegated it and let it go there?

6 A. Because he worked with [former property manager].

7 Q. And he was approving [former property manager's]
8 payroll, too; is that correct?

9 A. Yes.

10 Q. Okay. Regarding the marketing plan. I had
11 shown you earlier that the marketing plan had been
12 approved by the board without a board meeting. Do you
13 recall seeing that document? I can find it for you if you
14 need to see it again.

15 A. Is that the one I have seen already today?

16 Q. Yes.

17 A. I don't necessarily need to see it again.

18 Q. But do you recall adopting the marketing
19 plan to sell the spaces for the developer?

20 A. (Affirmative nod).

21 Q. You recall that? She is shaking her head
22 yes.

23 A. Yes.

24 Q. And I asked you if the board had taken
25 action as to whether or not the marketing plan was -- they

1 weren't going to continue with it in terms of doing the
2 mailing?

3 A. Yes.

4 Q. And I asked you -- what I want to know is,
5 have you had an -- do you review the minutes regularly
6 when you aren't at a meeting or --

7 A. I do on a monthly basis.

8 Q. Do you know where in the minutes it says
9 that the board discontinued the mailing to the --

10 A. No, I don't.

11 Q. You don't know that?

12 A. (Negative nod).

13 Q. And you established earlier that you had
14 a -- you know who Kathy Bupp is?

15 A. Yes.

16 Q. And do you recall having a conversation
17 with Kathy Bupp, where you asked -- you stated to her that
18 you asked Kevin why Frank didn't do the wall legally?

19 A. I do not recall making that statement at
20 all. I would almost deny it. I don't remember that.

21 Q. Okay. Do you think Kathy is just making
22 that up?

23 MR. CULOTTA: You can answer that.

24 A. I think she embellished that somehow. I
25 did not -- I would never have asked her that.

1 MS. BELLER: I believe we're done with our
2 portion. The other counsel, of course, has an opportunity
3 to --

4 MR. HANCOCK: I have no questions.

5 MR. PRELL: Can I ask a question?

6 MR. HANCOCK: If you want me to ask her a
7 question, give it to me and I'll ask her. Okay. I will
8 have one.

9 MR. CULOTTA: Go ahead.

10

11 CROSS-EXAMINATION,

12 QUESTIONS BY JAMES HANCOCK:

13 Q. Miss Chandler, do you know if any other
14 bids were made on 1104, other than what Mr. Zipperle made?

15 A. I don't know. All I know is I would see it
16 appear on the multiple listing, and then it was gone.

17 Q. You don't know if there were any other
18 offers or not, or what the amounts would have been?

19 A. No, I do not. No, I don't.

20 Q. Okay. All right. And, again, to clarify,
21 on the parking spaces that were under Mr. Prell's name, do
22 you know whether or not, for a fact, Mr. Prell was the one
23 that listed those?

24 A. No, I do not know that.

25 Q. Is it possible that someone else could have

1 listed them and used Mr. Prell as their contact?

2 A. It's possible.

3 MR. HANCOCK: That's all I have.

4 MR. CULOTTA: Can we go off for a minute?

5 MS. BELLER: Sure.

6 (A RECESS WAS TAKEN AT THIS TIME.)

7 MR. CULOTTA: I just have a couple of
8 follow-ups here.

9

10 CROSS-EXAMINATION,

11 QUESTIONS BY JAMES CLAYTON CULOTTA:

12 Q. First off, with regard to the developer, do
13 you know whether the developer had liquidated all of his
14 parking spaces prior to selling all of his condos? I mean
15 you, personally.

16 A. That marketing plan was -- that's when that
17 happened, after he sold his condos.

18 Q. What I'm saying is, do you know whether he
19 had sold all of his parking spaces prior to selling all of
20 his condos?

21 A. No, I don't know.

22 Q. Do you know whether the developer is bound
23 by the same restrictions as the homeowners?

24 A. I don't think -- I can't tell you what, but
25 I don't think he had the -- no, he wasn't bound by the

1 same as the homeowners were, but I can't tell you what it
2 was.

3 Q. Okay. Do you know why The Harbours -- and
4 speaking -- you, personally. Do you know why The Harbours
5 accepted -- or the developer accepted Frank Prell's offer
6 to buy the parking spaces?

7 A. They were for sale, and Frank bought them.

8 Q. But do you have any knowledge as to why
9 they accepted his offer?

10 A. Well, it was -- I mean, they got the whole
11 thing sold in bulk. They didn't have to fool around with
12 it. And we would still have some of them for sale,
13 probably, if Frank hadn't have bought them. So it was a
14 convenience. It was a smoother transition that way than
15 it would to have kept them on the market, and time
16 consuming.

17 Q. Okay. As you sit here today, do you think
18 the developer and The Harbours got a good deal in selling
19 those spaces to Mr. Prell?

20 A. I think so.

21 Q. Let me ask you a question. Have you ever
22 sold foreclosed property?

23 A. No.

24 Q. Are you familiar with Fannie Mae's HomePath
25 process?

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A. No.

Q. If it allowed for multiple purchasers to acquire a property, would you have any knowledge about that?

A. No.

Q. If it had made any determinations with regard to owner occupancy, would you have any knowledge about that?

A. I just knew there was an owner occupancy certificate. I have heard of that before.

Q. But you're not familiar with or aware of the criteria or how Fannie Mae reviews that?

A. No.

MR. CULOTTA: I have no further questions.

MS. BELLER: I believe we're done.

AND FURTHER THE DEPONENT SAITH NOT.

SHARON CHANDLER

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SHARON CHANDLER

1 STATE OF INDIANA)

) SS:

2 COUNTY OF SCOTT)

3 I, Angela Thompson Stidham, a Notary Public in and
4 for the County of Scott, State of Indiana at large, do
5 hereby certify that SHARON CHANDLER, the deponent herein,
6 was by me first duly sworn to tell the truth, the whole
7 truth, and nothing but the truth in the above-captioned
8 cause.

9 That the foregoing deposition was taken on behalf of
10 the Plaintiff at the offices of Attorney General, 720
11 rolling Creek Drive, New Albany, Floyd County, Indiana, on
12 the 20th day of May, 2013, pursuant to the Applicable
13 Rules.

14 That said deposition was taken down in stenograph
15 notes and afterwards reduced to typewriting under my
16 direction, and that the typewritten transcript is a true
17 record of the testimony given by said deponent; and
18 thereafter presented to said deponent for his/her
19 signature;

20 That the parties were represented by their
21 aforementioned counsel;

22 I do further certify that I am a disinterested person
23 in this cause of action; that I am not a relative or
24 attorney of either party, or otherwise interested in the
25 event of this action, and am not in the employ of the

1 attorneys for either party.

2 IN WITNESS WHEREOF, I have hereunto set my hand and
3 affixed my notarial seal this ____ day of _____,
4 2013.

5
6

Angela Thompson Stidham

7

My Commission Expires:

8 May 27, 2017

9 County of Residence:

Scott

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