

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. 50-2008-CA-034979-XXXX-MB-AW

BANKUNITED, FSB,
Plaintiff,

vs.

IOSIF OSTROVSKY, a married man,
if living and if deceased, et al.,

Defendant(s).

_____ /

DEPOSITION OF TINA BADO

Monday, April 5, 2010
1:25 p.m. - 2:50 p.m.

Palm Beach County Courthouse
205 North Dixie Highway
West Palm Beach, Florida

Reported By:

Philip W. May

Notary Public, State of Florida

Conсор & Associates Reporting and Transcription

West Palm Beach Office

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1 APPEARANCES:

2 On behalf of the Plaintiff:

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9

10 On behalf of the Defendant(s):

11 DUSTIN ZACKS, ESQ.

12 ICE LEGAL, P.A.

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1 I N D E X

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3 WITNESS: TINA BADO PAGE

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5 Cross Examination 62

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11 EXHIBITS: (DEFENDANT'S)

12 NUMBER DESCRIPTION PAGE

13 1 Affidavit of Plaintiff's Claim 14

14 2 Affidavit of Plaintiff's Claim 17

15 3 Affidavit of Plaintiff's Claim 20

16 4 BankUnited's Answers to 42

Interrogatories

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5 Servicing Disclosure Statement 45

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6 Notice of Deposition Duces Tecum 47

19 for Tina Bado

20 7 Notice of Default 49

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1 THEREUPON,

2 TINA BADO

3 being by me first duly sworn to tell the whole truth,
4 as hereinafter certified, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. ZACKS:

7 Q State your name, please.

8 A Tina Bado.

9 Q Your title?

10 A Senior vice president.

11 Q Of what company?

12 A BankUnited.

13 Q Have you given deposition before?

14 A Yes.

15 Q How many?

16 A More than ten.

17 Q As part of your job duties, you sign documents,
18 correct?

19 A Correct.

20 Q You sign documents in support of litigation?

21 A Yes.

22 Q That would include affidavits and assignments,
23 correct?

24 A Yes.

25 Q How long, on average, do you take for each

1 affidavit?

2 MS. PASKEWICZ: Object to the form. Go ahead.

3 MR. ZACKS: What's wrong with the form? I can
4 change it.

5 MS. PASKEWICZ: You're asking how long she takes
6 typically, not how long she took on this specific
7 one.

8 MR. ZACKS: Okay. You can answer.

9 THE WITNESS: Affidavits of indebtedness, or
10 could you specify what kind of affidavits?

11 MR. ZACKS: Sure.

12 BY MR. ZACKS:

13 Q In general, I'd say affidavits of indebtedness.

14 A With affidavits of indebtedness, it usually
15 takes about a minute, depending on how slow the system is
16 or how fast the system is.

17 Q In general, how many affidavits of indebtedness
18 do you sign on a weekly basis?

19 MS. PASKEWICZ: Object to the form, relevance.

20 THE WITNESS: It varies. We can have two to as
21 many as 50.

22 BY MR. ZACKS:

23 Q Besides affidavits and assignments, what other
24 kinds of documents do you sign in connection with
25 foreclosure litigation?

1 A For foreclosure litigation, it would just be
2 affidavits, and sometimes the interrogatories on the
3 litigation side.

4 Q Can you take me through the procedure for
5 signing an affidavit of indebtedness. First, do you have
6 the notary actually in your office with you?

7 A For the affidavits, yes. Any documents that are
8 signed on BankUnited on behalf of the bank is signed with
9 a notary. The BankUnited associate or the notary is
10 on-site.

11 Q And do you usually take an oath or make a verbal
12 acknowledgment when you sign affidavits?

13 MS. PASKEWICZ: Object to the form.

14 MR. ZACKS: Based on what kind of affidavits?

15 MS. PASKEWICZ: Well, the affidavit itself is a
16 verbal acknowledgment and has an oath in it, so I'm
17 not really sure what you're asking.

18 THE WITNESS: That's correct. It does have an
19 oath in it.

20 BY MR. ZACKS:

21 Q Okay. So do you take an oath?

22 A Well, we sign off on the oath and the affidavit,
23 because there was a notary swearing to the affidavit.

24 Q But the notary doesn't actually swear you in,
25 it's just contained on it?

1 A Correct.

2 Q Jan {sic} Darley: Can you describe your
3 business relationship with her, how she fits into your
4 office.

5 A I'm sorry, who?

6 Q J.N. {sic} Darley.

7 A Oh, Anne Darley.

8 MS. PASKEWICZ: Objection to the form,
9 relevance.

10 BY MR. ZACKS:

11 Q You can answer.

12 A What was the question?

13 Q What's the business relationship? How does she
14 fit in with your office?

15 A She is one of our associates that prepares
16 affidavits of indebtedness. She notarizes the documents.
17 She also handles some title issues.

18 Q So that's her title, "Associate?"

19 A She's a foreclosure processor.

20 Q Is she the only notary who notarizes documents
21 that you sign in support of foreclosure litigation?

22 A No.

23 MS. PASKEWICZ: Object to the form, relevance.

24 BY MR. ZACKS:

25 Q Notarizing documents such as an affidavit of

1 indebtedness is part of her job duties, correct?

2 A No, it's not a part of her job duties. She's a
3 notary, and if we need to use her notary, we do.

4 Q So she has authority to refuse to notarize a
5 document if she so chooses?

6 A Sure.

7 Q So you're senior vice president. Can you
8 describe your duties, please.

9 A Day-to-day duties is to the functions of --
10 right now, it's just a function of the foreclosure
11 bankruptcy department, making sure that timelines are met
12 accordingly, that cases are being processed timely and
13 accurately. It involves training, policies, procedures,
14 budgets.

15 Q How many folks would you say you have working
16 under you?

17 A Right now, currently, there are about 12 or 13
18 associates.

19 Q Previously, you were vice president at
20 BankUnited, FSB, correct?

21 A Correct.

22 Q Can you tell me what happened to that company?

23 A To BankUnited, FSB?

24 Q Right.

25 A It was taken over by the FDIC.

1 Q After that?

2 A It was sold off to investors.

3 Q When you say it was sold off to different
4 investors, I guess first, how many different investors, if
5 you could guesstimate?

6 A I honestly don't know the number of investors.

7 Q Who would have more knowledge of that?

8 A The purchase and sales agreement is made part of
9 the public records on the FDIC web site, so you could
10 obtain those and review those documents.

11 MS. PASKEWICZ: I think it's already been
12 produced as an attachment to the motion to substitute
13 party plaintiff.

14 BY MR. ZACKS:

15 Q Tell me how your duties changed as the company
16 changed, if you would.

17 A The only thing that has changed is within the
18 last six to eight months we have taken the position that
19 we have a certain person responsible for a certain
20 function within the department in one specific department.
21 When I initially started at BankUnited, FSB, I had
22 collections, foreclosures, bankruptcies, lost mitigation
23 and REOs.

24 As the company grew, the responsibilities grew.
25 We have elected to segregate the departments, to have one

1 specific person handle one specific area.

2 Q Tell me, what was your title when the FDIC was
3 in charge, before it had been sold off to investors?

4 A Senior vice president.

5 Q Do you know how long the FDIC was in charge?

6 A A day.

7 Q Did BankUnited get all the assets of the former
8 BankUnited, FSB?

9 A I couldn't answer that.

10 Q Do you know who would have more knowledge of
11 that?

12 MS. PASKEWICZ: Object to the form, relevance.

13 THE WITNESS: No.

14 BY MR. ZACKS:

15 Q Were you aware that BankUnited, FSB continued to
16 file documents in its own name in this case, even after it
17 had basically folded into the FDIC?

18 MS. PASKEWICZ: Object to the form, relevance.

19 THE WITNESS: We have power of attorney to sign
20 on behalf of the FDIC for BankUnited, FSB. So it is
21 possible that there were documents signed as
22 BankUnited, FSB.

23 BY MR. ZACKS:

24 Q In your process of reviewing, say, affidavits of
25 indebtedness or other documents that you signed in

1 connection with foreclosure litigation, would that be
2 something you would review, as to if it was still signing
3 as to BankUnited, FSB, or is that not something that was
4 really reviewed for?

5 MS. PASKEWICZ: Object to the form. I did not
6 really follow that.

7 MR. ZACKS: It's not something that's really
8 reviewed for. I can clarify.

9 BY MR. ZACKS:

10 Q You said it was possible that you could be
11 signing on behalf of the FDIC for the former BankUnited,
12 FSB?

13 A Yes.

14 Q Is that something you personally would review
15 for on a document you would sign?

16 MS. PASKEWICZ: Object to the form, relevance.
17 The only document she signed was from before the
18 takeover.

19 THE WITNESS: Normally, we do look at that for
20 the signing title and how we are signing that.
21 However, there was a little uncertainty at the
22 beginning, when the FDIC first came in, as to how we
23 were supposed to be signing the documents. So with
24 the power of attorney for the signing on behalf --
25 for the FDIC with BankUnited, FSB, we were told that

1 wouldn't be an issue.

2 BY MR. ZACKS:

3 Q Take me through the process of preparing an
4 affidavit of indebtedness.

5 A In preparing for an affidavit of indebtedness,
6 we would pull up a payoff or similar to a payoff statement
7 on the mortgage loan, calculating the unpaid principle
8 balance, any accrued interest, late charges and any escrow
9 advances. Escrow advances would be consisting of any type
10 of tax payments, M.I. payments, housing insurance payments
11 or anything of that nature.

12 Q Now, you said we would pull them up. Would you
13 personally enter the numbers into an affidavit or would
14 someone in your office prepare that for you?

15 A Someone else prepares the affidavit figures, and
16 then I review them while I sign them, the payoff
17 statement.

18 Q Would it be a different person each time, in
19 general? When you're signing all of these affidavits, who
20 would prepare them for you?

21 A Separate different individuals preparing
22 affidavits?

23 Q Yes.

24 A Yes, there's several people who prepare
25 affidavits.

1 Q Is there a way to tell on any given affidavit
2 who prepared it for you?

3 MS. PASKEWICZ: Objection to form, relevance.

4 THE WITNESS: Only if they were making a
5 notation in the system.

6 BY MR. ZACKS:

7 Q And a notation in the system would only take
8 place if they changed something, correct, not just if they
9 viewed figures?

10 A No, that would be if they viewed and -- whatever
11 they did on the file, would be notated in the system that
12 they reviewed or prepared the affidavit of indebtedness,
13 or completed the step in foreclosure tracking.

14 Q So that's done every time then, that someone
15 prepared an affidavit?

16 A Every time that an affidavit is prepared, the
17 responsibilities are to put in the foreclosure tracking
18 that has been completed.

19 Q I ask you to turn to the Affidavit of
20 Plaintiff's Claims.

21 MS. PASKEWICZ: I'm just going to object to the
22 use of this document, given that it's from an
23 unrelated litigation.

24
25

1 (Defendant's Exhibit No. 1, Affidavit
2 of Plaintiff's Claim, was marked for
3 identification.)

4 BY MR. ZACKS:

5 Q I'll ask if you recognize this document.

6 A I recognize the document, yes.

7 Q On the last page of that affidavit, two pages
8 later, I'll ask you if that's your signature.

9 MS. PASKEWICZ: I'm just going to make a blanket
10 objection to all of this so I don't have to keep
11 interrupting you, if that's all right, to this whole
12 line of questioning involving the affidavit from the
13 Miami case.

14 MR. ZACKS: Just on relevance?

15 MS. PASKEWICZ: Yes.

16 BY MR. ZACKS:

17 Q You can answer. Is that your signature?

18 A It looks like my signature.

19 Q Do you recall signing this form?

20 A No, I do not.

21 Q Just a quick question on the title. Again, on
22 the last page it has you, who was employed by Bank United,
23 Assignee of the FDIC, as Receiver of BankUnited, FSB.

24 Now, were there any different requirements at
25 the time you were signing and using this title, when you

1 prepared an affidavit of indebtedness or reviewed an
2 affidavit of indebtedness?

3 MS. PASKEWICZ: Object to the form, relevance.

4 Again, this is after the takeover. The affidavit in
5 this case is before the takeover.

6 THE WITNESS: I don't understand what you mean
7 by any difference in signing the affidavit.

8 BY MR. ZACKS:

9 Q Sure. Well, you indicated that your normal
10 course of things would be that someone else would prepare
11 it for you?

12 A Yes.

13 Q You'd take about a minute to review?

14 A Yes.

15 Q Did that change as your title changed from
16 BankUnited, FSB to this title?

17 A No.

18 Q Now, on other occasions you have signed just as
19 senior vice president of BankUnited, correct, without all
20 of this additional language?

21 A It's possible, yes.

22 Q And this motion, the motion that's attached to
23 the affidavit, if you know, can you just tell me why the
24 attorneys continued to file under the name of BankUnited,
25 FSB, when it didn't exist any longer?

1 MS. PASKEWICZ: I object again. This is not
2 what the document says. This is signed as BankUnited
3 as Successor in Interest of BankUnited, FSB.

4 MR. ZACKS: Sure. I'm asking about the motion
5 itself.

6 MS. PASKEWICZ: The motion itself is BankUnited
7 as Successor in Interest of BankUnited, FSB.

8 MR. ZACKS: Right. And Plaintiff, BankUnited,
9 FSB, and I'll direct you to the second page. Camner,
10 Lipsitz, attorneys for BankUnited, FSB.

11 MS. PASKEWICZ: Again, but the style of the case
12 is BankUnited as Successor in Interest.

13 BY MR. ZACKS:

14 Q Okay. After the takeover -- if you want to call
15 it that, all the events that changed the incarnation of
16 BankUnited, FSB -- was it commonplace to continue to file
17 things in the name of BankUnited, FSB?

18 MS. PASKEWICZ: Objection to relevance.

19 THE WITNESS: You'd have to ask the Camner firm.
20 I didn't prepare the documents, so I wouldn't know.
21 I couldn't answer on their behalf.

22 BY MR. ZACKS:

23 Q In connection with the foreclosure litigation,
24 would you actually review motions or just affidavits,
25 things that you would sign?

1 MS. PASKEWICZ: Objection. I'm going to ask you
2 not to answer anything that you and your attorneys
3 discussed. How she and her attorneys dealt with the
4 filing motions is not discoverable.

5 BY MR. ZACKS:

6 Q Not what you discussed with your attorneys. My
7 question was: In connection with foreclosure litigation,
8 would you actually review motions to see if they were
9 still filing things in the name of BankUnited, FSB, or
10 would you only review the things that you signed?

11 A I reviewed the affidavit of indebtedness. I did
12 not review the motion for summary judgment.

13 MS. PASKEWICZ: The same objection to the use of
14 this document, which is again from an unrelated
15 foreclosure matter. I'm going to put on a blanket
16 objection to the relevance of the line of
17 questioning, that way I'll interrupt you less.

18 MR. ZACKS: Sure.

19 (Defendant's Exhibit No. 2, Affidavit
20 of Plaintiff's Claim, was marked for
21 identification.)

22 BY MR. ZACKS:

23 Q The same thing. I'd wonder if you'd flip to the
24 Affidavit of Plaintiff's Claim, and I ask if you recognize
25 the document?

1 A I recognize the document.

2 Q Is that your signature on the last page of the
3 affidavit?

4 A That looks like my signature.

5 Q Do you remember signing this form?

6 A On this specific case, no.

7 Q Now, this one, again, on the last page you
8 signed as who was employed by BankUnited as Successor in
9 Interest to BankUnited, FSB?

10 A Yes.

11 Q Do you know if there is any difference between
12 this title that they listed you as versus the last one,
13 which was on behalf of the FDIC, on behalf of the previous
14 company? I just wonder if you know any difference?

15 A As I mentioned before, when the FDIC first took
16 over, there was a lot of uncertainty as to how the
17 documents were to be signed. So until that was actually
18 taken care of and resolved, we were told specifically from
19 the FDIC that there wouldn't be an issue, because we had
20 power of attorney to assign on their behalf for
21 BankUnited, FSB.

22 Q When did you stop signing documents using the
23 title "On Behalf of the FDIC," such as the previous
24 affidavit that we saw?

25 MS. PASKEWICZ: Object to the form. When did

1 they stop?

2 BY MR. ZACKS:

3 Q Sure, I can take you through the steps. You
4 said at a certain point it was cleared up, correct, these
5 signing procedures?

6 A Yes.

7 Q When did that come down? When did it start to
8 be clarified that you would no longer sign things as
9 BankUnited on behalf of the FDIC, on behalf of the former
10 company?

11 MS. PASKEWICZ: Object to the form. I don't
12 think that tracks what she said before.

13 THE WITNESS: We are still signing documents on
14 behalf of the FDIC.

15 BY MR. ZACKS:

16 Q So what has changed then? I mean, you said it
17 was uncertain at the beginning what has, I guess, become
18 more clear at this point.

19 A More clear as to if we sign on BankUnited or
20 BankUnited, Assignee of the FDIC.

21 Q Okay. And can you tell me the difference in the
22 two instances? Why would you sign with one as opposed to
23 the other?

24 A It depends on if the foreclosure action had
25 already been initiated under the name of BankUnited, FSB.

1 Then we are making all attempts to sign on behalf of the
2 FDIC. Otherwise, all new foreclosure -- the institution
3 of the foreclosure process is in the name of BankUnited.

4 Q And the same couple questions for this one. You
5 didn't review this motion for summary judgment?

6 A Not the motion for summary judgment, I did not
7 review. I reviewed the affidavit.

8 (Defendant's Exhibit No. 3, Affidavit
9 of Plaintiff's Claims, was marked for
10 identification.)

11 BY MR. ZACKS:

12 Q I'll take a couple of questions out of order of
13 this one that I skipped.

14 Now, you have a power of attorney to sign for
15 FDIC as a receiver of BankUnited, FSB, correct?

16 A Correct.

17 Q And when did you get that power of attorney?

18 A I couldn't give you the exact date, I'd have to
19 look at the power of attorney itself.

20 Q Can you give me a window or a time period, if
21 you know?

22 A I would say probably sometime shortly after it
23 was sold off to the investors, June, July or August. I
24 couldn't be exact.

25 Q Does that power of attorney expire?

1 A It does expire, yes.

2 Q Do you know when?

3 A I believe it is May of this year.

4 Q Okay. I'll ask you to take a look at the
5 Affidavit of Plaintiff's Claim that's attached to this
6 motion, and I ask if you recognize that?

7 A Yes, I do.

8 Q Is that your signature on the final page of the
9 affidavit?

10 A It appears to be my signature.

11 Q Do you remember signing this one?

12 A Specifically remembering this one, no.

13 Q Do you know offhand who prepared this affidavit
14 for you to review?

15 A In March, it should have been Anne Darley.

16 Q Paragraph two says that you examined all books,
17 records and documents kept by Plaintiff concerning
18 transactions herein with the defendants.

19 Can you tell me what books, records and
20 documents that you examined?

21 A The Affidavit of Indebtedness, when it's
22 provided to me, comes along with a copy of the mortgage
23 and the note. I go to sign in or review our system or
24 servicing system of record for the unpaid principle
25 balance, due date, outstanding advances. If it's within a

1 reasonable variance of the payoff statement, I sign off on
2 it.

3 Q A couple of things: The servicing system, you
4 said it's like a printout that would be attached to the
5 affidavit that you review?

6 A No, I actually review the system itself, not the
7 printer.

8 Q What is the name of that?

9 A It's a payoff statement.

10 Q But the data base, is there a name for that?

11 A Our servicing system is the Fidelity System.

12 Q Okay. And you said if there's a reasonable
13 variance, then you will sign off on it. Can you describe
14 how you draw the distinction?

15 A Reasonable variance. We would consider around
16 \$100 to \$150, and that would really be for the per diem on
17 the interest, and possibly a property inspection or
18 something of that nature.

19 Q Would you say it's common to encounter an
20 unreasonable variance when you're reviewing all of these
21 affidavits that you sign?

22 A For an unreasonable variance, no.

23 Q How often would you say you might see one?

24 A A variance of \$100 or more, or are you saying an
25 unreasonable variance? Because with unreasonable, there's

1 no justification for it. It can't be. You can't do an
2 affidavit when there's an unreasonable variance. But for
3 \$100 to \$150 -- anything less than \$100, I would say, is
4 probably maybe 10 to 20 a year.

5 Q Tell me, what do you do when you see one of
6 those?

7 A Usually, it's questioned. It's set aside and
8 it's questioned as to why there is a variance. Usually,
9 it's something for a property inspection that hasn't come
10 in yet, that has been debited to the account -- or not
11 debited to the account, but at least assessed to the
12 account.

13 Q So, for instance, just waiting for
14 documentation?

15 A Yes, supporting documentation for it.

16 Q At that point, would you just send it back to
17 the person who prepared it?

18 A Yes, and they will correct it.

19 Q Do you happen to know in this case if you sent
20 it back?

21 A On this one, I couldn't tell you if I did or
22 not.

23 Q Would there be a record of that?

24 A There might be, but with a minimal variance like
25 that, there's -- there's really no value in the majority

1 of the properties that are in the State of Florida right
2 now, so a hundred-dollar variance doesn't really make a
3 difference on your bidding instructions.

4 Actually, the affidavit and moving forward with
5 the motion for summary judgment, it would be a loss for
6 the mortgage company not being able to collect that extra
7 hundred dollars. It's never attached onto the borrower.

8 Q So is it a policy that if you send an affidavit
9 back it doesn't get recorded?

10 MS. PASKEWICZ: Object to the form.

11 MR. ZACKS: Sure, sure. Sorry.

12 BY MR. ZACKS:

13 Q You said, for instance, when somebody prepares
14 an affidavit for you, there's a notation in the file that
15 they went ahead and did that. Is there generally not a
16 notation if you send it back for a minor variance?

17 A Usually, there isn't. They'll make the
18 correction and send it back.

19 Q Will they notate that, when they correct the
20 minor variance?

21 A Well, the responsibility is to track that the
22 affidavit of indebtedness has been completed, so that's
23 what needs to be filled out.

24 Q The Fidelity System, can you describe any
25 quality control procedures that you have on that?

1 A No, I can't.

2 Q Do you know who would have more information
3 about that?

4 A No, I don't.

5 MS. PASKEWICZ: Object to the form.

6 BY MR. ZACKS:

7 Q With these loan amounts such as payments, debits
8 and credits -- anything associated with the payment
9 history, that I assume would be on the servicing system --
10 when those were made, is there a notation with the
11 transaction in terms of who was entering the numbers?

12 A Actually, paying the disbursement?

13 Q Well, who at your company actually would record
14 it?

15 MS. PASKEWICZ: I'm sorry, I have to object to
16 the question, because I'm not sure what you're asking
17 her.

18 MR. ZACKS: No, that's okay. Anytime you have a
19 question, just ask me.

20 BY MR. ZACKS:

21 Q In terms of each transaction that's recorded on
22 your system. So maybe it's a monthly payment, or it's an
23 escrow charge. The person who makes that on your
24 servicing system, is there a record of who actually fills
25 in each transaction?

1 A Paying disbursements, I do not think that
2 there's an actual person's name associated with the -- say
3 like a tax disbursement. But the transaction is actually
4 posted against the account, and you can see every single
5 transaction on the payment history.

6 Q But on the payment history, let's say we've got
7 a monthly payment for Month-X, and someone at your company
8 enters that in, there would be no record of who at your
9 company actually entered that in?

10 A Not on the payment history, no. Not that I'm
11 aware of.

12 Q Can you tell me about the security of the
13 Fidelity System, such as does everybody have access to it,
14 is it password protected?

15 A It is password protected. And based on what
16 area of the department that you work, whether it be
17 cashiering, payment posting or foreclosures, you have
18 different levels of sign-on and authority, and you're
19 accessed to maneuver throughout the system.

20 Q In terms of who can actually alter the record,
21 do you know how it works, who can do that and who can't?

22 A No, I don't.

23 Q Do you know who would have more information
24 about the security or safeguards of the Fidelity System?

25 A No, I don't.

1 Q The Fidelity System, those are the only records
2 that would be looked at to produce an affidavit?

3 A Correct.

4 Q And those are computerized, you said?

5 A Yes.

6 Q Kept where, only on the premises of your
7 company?

8 A Just our company, of course.

9 Q So you didn't enter any of the amounts on the
10 Fidelity System, such as payments or disbursements; is
11 that correct?

12 A That is correct.

13 Q Do you do anything, when you sign an affidavit,
14 to verify that each transaction was correct?

15 A Yes, I do. When I pull up the payoff statement
16 it will reflect exactly what was disbursed out of the
17 account.

18 Q Do you do anything to go back and verify that
19 what was actually recorded was correct?

20 A No, I do not.

21 Q I asked you about quality control earlier. But
22 at the time those entries are made, you're unaware of any
23 quality control procedures or someone that might
24 double-check it?

25 MS. PASKEWICZ: Object to the form, asked and

1 answered. I think we're getting a little far afield.

2 THE WITNESS: I have no idea.

3 BY MR. ZACKS:

4 Q The same thing on the back end, when it spits it
5 out here for an affidavit for you. Other than yourself
6 reviewing numbers to make sure that they're okay, are you
7 aware of any other procedures?

8 A The person that's actually preparing the
9 Affidavit of Indebtedness will review all the figures and
10 the disbursements.

11 Q Did you do any of your own calculations to
12 verify that these numbers were correct?

13 A No, I did not.

14 Q In paragraph 1, you state that you're employed
15 by BankUnited, FSB as senior vice president and have been
16 employed at all times concerning transactions between the
17 parties herein. But again, you have signed as officers of
18 different companies, correct?

19 MS. PASKEWICZ: Object to the form. These is
20 relevance. This is all before that.

21 THE WITNESS: It is all before that. Not only
22 that, it's the same company.

23 BY MR. ZACKS:

24 Q Paragraph 2, in the middle, you state that you
25 know of your personal knowledge that Plaintiff is the

1 holder of the note and mortgage.

2 Can you tell me what you did to verify that
3 statement?

4 A The documents that are provided to me are ones
5 that we have within our record and our custodian, and
6 those are the documents that are reviewed.

7 Q And you stated that normally you get a copy of
8 the note and mortgage attached when you go ahead and
9 review it?

10 A Correct.

11 Q Do you know where the copy that was attached
12 comes from?

13 A We are our own custodian, so many times it's not
14 only a copy, it might even be the original. The copy goes
15 into the file and the original is handed off to the
16 attorney. But it would be the original documents or a
17 copy of them. We obtain those from our custodian.

18 Q If it's a computerized copy or an image or
19 copied out, where would it come from, the same servicing
20 data base or a different place?

21 A No, it would be the actual file itself. We have
22 hard files. Our files are not on image.

23 Q Do you happen to recall for this one, in the
24 course of reviewing it, if they attached the original note
25 of mortgage or did they attach a copy?

1 A I couldn't recall. It's been two years and many
2 affidavits ago.

3 Q Sure. How would you know if it was the original
4 or a copy? In other words, would there be a note telling
5 you that or --

6 A Well, you can determine original mortgage and
7 note document in comparison to a Xerox copy. The paper
8 and texture is different. The majority of them are signed
9 in blue ink so you can detect a difference.

10 Q You stated you're your own custodian?

11 A Correct.

12 Q So those notes and mortgages are typically kept
13 on-site in a locked vault?

14 A Correct. It's air-tight, very difficult to get
15 into.

16 Q And can you describe the security and safeguards
17 with that in terms of who has access, how might they get
18 access?

19 A The document area is supervised by a
20 post-closing department, which is one supervisor and two
21 associates that actually work out of the document
22 custodian area. It's locked. You can't get in. And your
23 security card has to allow you to have access to get into
24 the area.

25 Q Tell me about the process of getting either a

1 copy or an original out of the file.

2 A In order to get a copy or an original on any
3 file, you have to send an e-mail to the loan request file
4 division. From that, they will pull those documents and
5 come around and hand-deliver the files to you after you
6 sign-off on a form stating that you're receiving the
7 documents.

8 Q And the records of all of that is kept, the
9 request?

10 A I would assume they are kept. I know that there
11 is also another data base where that information is
12 housed, and who receives the documents so that they have a
13 way of tracking them. It's a file tracker. I don't have
14 access to that system, so I don't know.

15 Q And you said it's the loan --

16 A Loan file request, through a post-closing
17 department.

18 Q Isn't it true that after you signed this
19 affidavit in March of 2009, that this loan was sold to ARC
20 Pool 1, LLC?

21 A I could not tell you.

22 Q Do you know who would have more knowledge of
23 that?

24 A That would be our secondary marketing area.

25 Q Do you know who is in charge of that department?

1 A I believe it's Bill Williams.

2 Q To your knowledge, is it true that BankUnited
3 has assigned a significant number of their loans to ARC?

4 MS. PASKEWICZ: Object to the form, calls for a
5 conclusion, relevance.

6 THE WITNESS: I couldn't tell you. I don't do
7 loan sales.

8 BY MR. ZACKS:

9 Q Do you know of any other companies besides that
10 that BankUnited has sold their loans to?

11 MS. PASKEWICZ: Object to the form, relevance.

12 THE WITNESS: Again, I don't deal with loan
13 sales, so I would be hesitant to answer.

14 BY MR. ZACKS:

15 Q Have you signed any assignments to ARC or any
16 other company?

17 MS. PASKEWICZ: Object to the form, relevance.

18 THE WITNESS: Specifically to ARC, I am not
19 aware of. We have had some loan sales from Fannie
20 Mae where we had some servicing transferred to the
21 Green Tree. We've had some old assignment files come
22 back from probably three or four years ago that we
23 sold off to Greenwich Capital. So it's very possible
24 that I signed off on assignments.

25

1 BY MR. ZACKS:

2 Q Did you check to be sure that you did not do so
3 in this case?

4 A No, I did not.

5 Q Is there typically a document or a data base
6 that you look at if you had a question about whether a
7 loan was sold or not?

8 A If I had a question, yes, there is a data base
9 you can look at.

10 Q What data base is that?

11 A It's the same Fidelity System.

12 Q Just different screens?

13 A Different screens.

14 Q What would that be called?

15 A That would be for the investor, the investor
16 screen.

17 Q The investor screen?

18 A Yes.

19 Q Would you say it's common for you to look at
20 that investor screen in reviewing an affidavit, or is it
21 uncommon?

22 A It's uncommon.

23 Q Can you give me an example? Would it only be if
24 you had a question?

25 A If there was a zero principal balance and I'm

1 getting ready to sign an affidavit of indebtedness, I
2 would want to know why it was zeroed-out. Was it a short
3 sale, was it investor sold, anything of that nature. Was
4 it transferred.

5 Q Sure. Can you tell me how often you might
6 encounter it on average?

7 A On an affidavit, on an average, I would probably
8 say one, ever. Because if the person is doing the
9 affidavit correctly, they're pulling up the information
10 and the screen shots, and they have the principle balance.
11 Otherwise, they're going to question why there's no zero
12 principal balance and we're in foreclosure.

13 Q On that investor screen, could you tell me what
14 it would say? Just a zero principle balance and anything
15 else?

16 A It would give the investor's name that it was
17 sold to and their address.

18 Q Do you know how many loans or what percentage of
19 BankUnited's loans were sold to ARC?

20 A No, I don't.

21 Q Do you know if this property goes to auction if
22 the bid will be assigned to a company other than
23 BankUnited?

24 MS. PASKEWICZ: Object to the form, calls for
25 speculation.

1 THE WITNESS: I don't know. If it's a
2 BankUnited loan, it would go to BankUnited.

3 BY MR. ZACKS:

4 Q Do you know if BankUnited related to ARC in
5 terms of corporate structure?

6 MS. PASKEWICZ: Object to the form, relevance.

7 THE WITNESS: I have no idea.

8 BY MR. ZACKS:

9 Q And the final sentence on paragraph 2 of the
10 affidavit is the note of mortgage, which are the subject
11 matter of the action or signed by the defendants.

12 How did you verify that?

13 A The signature page on the mortgage document.

14 Q Did you have other signatures that you compared
15 it to?

16 A No. Normally it's just the note and the
17 mortgage are supplied with the affidavit.

18 Q Would there be a record if you had looked at the
19 original versus just looked at a copy in reviewing for the
20 affidavit?

21 A No.

22 Q Did you bring any expert in, for example, to say
23 that the copy attached to the complaint -- the copies on
24 the note of the mortgage matched the original?

25 MS. PASKEWICZ: Object to the form, relevance.

1 THE WITNESS: Based on the document that I have
2 in front of me, the information that's on our screen
3 that shows the dates that the mortgage was given, the
4 mortgage amount and the mortgagers, if all of that
5 information matches, then that would be taken for
6 granted that it is a true and correct document.

7 BY MR. ZACKS:

8 Q The third paragraph on the next page says,
9 "Allegations set forth in the complaint are true and
10 correct based upon my personal knowledge."

11 Can you tell me when you read the complaint?

12 A Well, I'd have to go back to see when the
13 complaint was filed. We do review complaints, even more
14 so now because it is a requirement. But we do review the
15 complaints for accuracy.

16 Q Can you tell me at the time you signed this
17 one -- around March, that time of the year in 2009 -- what
18 the procedure would have been to review a complaint?

19 A Actually, when we do our affidavit of
20 indebtedness, the Camner firm provides us with a copy of
21 the complaint, just the front copy of the complaint.

22 Q How long do you typically take to read
23 complaints?

24 A Not very long. It's just a review to make sure
25 that the plaintiffs and the defendants are correct and

1 that the mortgage information is correct.

2 Q So if you could estimate; a couple of minutes,
3 ten minutes?

4 A Five minutes or less.

5 Q Did you personally verify any statements in the
6 complaint in this case?

7 A I would say yes, but I can't go back and tell
8 you. It's been a number of months ago.

9 Q Do you typically speak with other folks at your
10 company when you're viewing a complaint to verify
11 allegations?

12 A Only if there's any questions.

13 Q Can you tell me what might be a typical example
14 of something that might pop up that you need to speak to
15 someone about?

16 A For instance, if we had a dispute going on from
17 the borrower for payments, or something of that nature.

18 Q And, again, is it common or uncommon for you to
19 have to go back and actually --

20 A It's not very common. Very, very rarely are
21 there any type of payment disputes, other than the payment
22 amount itself and the increase on the adjustable rates.

23 Q The second part of paragraph 3 says, "Attached
24 thereto are true and correct copies of the originals, and
25 are genuine and authentic."

1 Can you tell me what you did, if anything, to
2 verify that those copies were genuine and authentic?

3 A Well, we look to make sure that we have some
4 recording information on the document. Again, we look at
5 the defendant's names to make sure that the mortgager's
6 names are the same; mortgage date, mortgage amount.

7 Q Do you do any independent investigation, other
8 than making sure everything matches up?

9 A No.

10 Q Paragraph 4 states, "The Plaintiff has complied
11 with all conditions precedent to the bringing of this
12 action."

13 Again, did you personally verify that the
14 company had complied with all the conditions precedent?

15 A What I do is prior to the foreclosure action
16 being initiated, I review the file to make sure that once
17 it's sent to the attorney for foreclosure that the demand
18 letters have been completed timely, the borrower has been
19 contacted on at least one, two, three, four, five or six
20 different attempts.

21 If all of that goes into place, then that's when
22 the file is transmitted to the attorney. So in deciding
23 to make sure that all those conditions were made, that's
24 done before the actual complaint is filed. And all of the
25 other items based upon the complaint filing to the

1 affidavit, I think we've already covered that.

2 Q So when this paragraph says "All Conditions
3 Precedent," again, the two things you're really talking
4 about are demand letter and contact and borrower?

5 A Correct.

6 Q And how exactly do you verify that? Again, is
7 that on the Fidelity System, different screen shots?

8 A Again, it is on the Fidelity System, and it
9 would be housed in the notes, referencing any type of
10 contact or contact attempts to the borrower and any type
11 of letters that were forwarded to the borrower.

12 Q In this case, can you recall with the
13 investigation you did to verify that the conditions
14 precedent were met?

15 A I can't recall, but if the demand letter wasn't
16 sent, it wouldn't be approved of for foreclosure. It's
17 part of the approval process.

18 Q Are there any conditions precedent to declaring
19 the full amounts payable under the note to be due?

20 MS. PASKEWICZ: Object to the form, calls for a
21 legal conclusion.

22 THE WITNESS: We file a demand letter.

23 BY MR. ZACKS:

24 Q Prior to accelerating the note, that's it?

25 A Prior to accelerating the notes, there are

1 telephone attempts. There are delinquent notices that are
2 sent out advising the borrower that they haven't made
3 their payment, and many attempts to contact them.

4 Q Now, with this affidavit you said that Anne
5 Darley probably would have at this time of year --

6 A At the time of March, yes.

7 Q Paragraph 6, "The mortgage sought to be
8 foreclosed is the first mortgage." Can you tell me what
9 you did to verify that, please?

10 A The mortgages that are on our Fidelity System at
11 this time were first money mortgages, as well as the
12 mortgage itself would say that it's a first money
13 mortgage.

14 Q So again, other than what's on the system or on
15 the computer, no other investigation needed?

16 A On my side, there's no other investigation, no.

17 Q The next paragraph speaks of hiring a law firm.
18 Can you speak of who at your company is in charge of
19 selecting counsel?

20 MS. PASKEWICZ: Object to the form, relevance.

21 THE WITNESS: The foreclosure attorneys are
22 selected through a review process for the senior vice
23 president, managers and vice president. The
24 collection manager, the vice president and the senior
25 vice president, they would make recommendations.

1 It also is presented to the board of directors
2 for them to review. Resumes are obtained. At that
3 time, that's how they select them. It's actually the
4 board of directors that makes the final decision.

5 BY MR. ZACKS:

6 Q Who transmits the case to counsel?

7 MS. PASKEWICZ: Object to the form, relevance.

8 THE WITNESS: At that time, in March, or prior
9 to March, there were two associates that actually
10 transmitted the cases to the attorneys.

11 BY MR. ZACKS:

12 Q Can you tell us their names, please?

13 MS. PASKEWICZ: Same objection. Go ahead.

14 THE WITNESS: Gosh, let me think back to see who
15 was doing it at that time. Ilyiana Jimenez and I
16 believe Will Urbina.

17 BY MR. ZACKS:

18 Q And you said their titles were as associates?

19 A Yes.

20 Q Would there be a notation of who actually
21 transmitted the case?

22 MS. PASKEWICZ: Same objection.

23 THE WITNESS: It's possible that it's documented
24 on the collection notes.

25

1 BY MR. ZACKS:

2 Q Is Camner, Lipsitz still counsel for your
3 company in this case?

4 A No, they are not.

5 Q If you know, can you speak of why not?

6 MS. PASKEWICZ: Object to the form, relevance.

7 I'm going to instruct you not to answer that because
8 it's in regards to the attorney-client relationship.

9 THE WITNESS: No, I wouldn't answer that.

10 MR. ZACKS: Okay. So just to confirm, you're
11 telling your client not to answer?

12 MS. PASKEWICZ: Yes.

13 (Defendant's Exhibit No. 4,
14 BankUnited's Answers to
15 Interrogatories, was marked for
16 identification.)

17 BY MR. ZACKS:

18 Q First, I'll ask you if you know Yeniset Acevedo?

19 A Yes, I do.

20 Q Can you describe her role? Does she serve under
21 you, or where does she fit into your office?

22 A She is one of the foreclosure processors.

23 Q And these were answers to interrogatories that
24 she submitted to us. We asked about who has the full
25 authority to settle, including writing down principles,

1 and she listed you. Would that be correct?

2 A Not correct.

3 Q And what would not be correct about that?

4 A Writing down principle.

5 Q If you could expound upon that. Is it that the
6 company never does principle write downs, or is it that
7 you personally don't have authority to do it?

8 A I don't write down principle balances.

9 Q Who has you told you not to write down principle
10 balances?

11 MS. PASKEWICZ: Object to the form, relevance.

12 THE WITNESS: My boss, my senior management.

13 BY MR. ZACKS:

14 Q Is that more than one person?

15 A There are several people, but the person I'm
16 reporting to right now is Tim Riley.

17 Q Have you ever written down principle?

18 MS. PASKEWICZ: Object to the form, relevance
19 and scope. Do you want to narrow it down a little.

20 MR. ZACKS: Sure.

21 BY MR. ZACKS:

22 Q If you can estimate, how many cases do you have
23 the full authority to settle? Are we looking at thousands
24 of cases or hundreds?

25 A You still have to be a little bit more specific.

1 For this particular loan, I did not have the authority to
2 write down the balance.

3 Q In dealing with mortgage foreclosure cases, have
4 you ever reached a settlement with a defendant that has
5 written down principle?

6 MS. PASKEWICZ: Form, scope. If you could
7 narrow it down some. Do you mean before the FDIC
8 takeover?

9 BY MR. ZACKS:

10 Q Let's go with BankUnited, FSB first. Did you
11 ever write down principle on behalf of them?

12 A I've written down principles, but not specific
13 to a foreclosure action.

14 Q And can you describe the circumstances of when
15 that would occur?

16 A That occurred for a second mortgage, junior
17 lienholder.

18 Q Other than principle write downs, you have the
19 authority to modify terms of loans with no other authority
20 signing off?

21 A At that time, yes, I was able to modify loans.

22 Q And at this time?

23 A At this time, I'm currently not modifying loans.

24 Q You said they kind of compartmentalized it?

25 A Yes, different responsibilities.

1 Q So loss mitigation now?

2 A Loss mitigation, correct.

3 (Defendant's Exhibit No. 5, Servicing
4 Disclosure Statement, was marked for
5 identification.)

6 BY MR. ZACKS:

7 Q Do you recognize this document?

8 A Yes, I do.

9 MS. PASKEWICZ: I object to it as much as it is
10 an unsigned copy.

11 BY MR. ZACKS:

12 Q Do you know what it is?

13 A It's a servicing disclosure.

14 Q Down at the middle, under "Servicing Transfer
15 Estimates," I'm looking at 1C, where it says, "We assign,
16 sell or transfer the servicing of some of our loans." And
17 they estimate, apparently, 25 percent of the mortgage
18 servicing.

19 Do you know that to still be true at this point?

20 A At this time BankUnited is not selling off their
21 servicing that I'm aware of, but this is very common in
22 the industry.

23 Q So at this point it would be zero percent?

24 A I have no idea.

25 Q Do you know who would have more information

1 about that?

2 A No, I don't. To my knowledge, we are not
3 selling off any servicing right now.

4 Q Can you speak to why the policy has changed, if
5 you know?

6 MS. PASKEWICZ: Object to the form, relevance.

7 THE WITNESS: I don't know. It could have been
8 that at the time this loan was originated, they were
9 selling off servicing. It's typical for the industry
10 to change, to sell or not to sell.

11 BY MR. ZACKS:

12 Q The next page, do you recognize what that
13 document is?

14 A Yes, I do.

15 Q Can you tell me what it is?

16 A This is a disclosure for the PMI insurance.

17 MS. PASKEWICZ: Same objection, that it's an
18 unsigned copy.

19 BY MR. ZACKS:

20 Q Do you know is there still a PMI in place at
21 this point?

22 MS. PASKEWICZ: Object to the form, relevance.

23 THE WITNESS: For this loan?

24 MR. ZACKS: Sure.

25 THE WITNESS: I believe there is still PMI

1 coverage on this loan.

2 BY MR. ZACKS:

3 Q If you know, has the bank submitted a loss claim
4 for this property?

5 MS. PASKEWICZ: Object to the form, relevance.

6 THE WITNESS: No, we have not.

7 BY MR. ZACKS:

8 Q What have you checked to verify that?

9 A For PMI claims, after the foreclosure sale is
10 held.

11 Q What would you look at to verify if that was
12 done or not, if a claim was made?

13 A We have a claim system within our Fidelity
14 System that would identify if a claim had been filed or
15 not.

16 Q Is that the actual title of the claim system?

17 A It's actually within the foreclosure
18 workstation, it's just a subfile or a subsystem.

19 (Defendant's Exhibit No. 6, Notice of
20 Deposition Duces Tecum for Tina Bado,
21 was marked for identification.)

22 Q Have you ever seen this before?

23 A No, I haven't.

24 MR. ZACKS: We asked you to bring some things
25 today. I see we have a pile of stuff that I'd like

1 to go through one-by-one and see what you brought in
2 response to our request.

3 MS. PASKEWICZ: I'm afraid the pile of documents
4 I gave you is responsive to the request for
5 production. I didn't notice that there was a
6 separate document request on this that was sent last
7 week.

8 BY MR. ZACKS:

9 Q So rather than go one-by-one, let me ask you to
10 take a brief perusal of this, such as your CV, corporate
11 resolutions for yourself and records.

12 Did you bring anything today in response to this
13 list, this Exhibit A?

14 A I did not print anything, no.

15 MR. ZACKS: So you represented that these are in
16 response to request for production?

17 MS. PASKEWICZ: They are.

18 MR. ZACKS: Okay. Do you have these numbered at
19 all?

20 MS. PASKEWICZ: I'm sorry, I didn't have time
21 to. You have three identical copies if you want to
22 go through them, but they're not Bate-stamped.

23 MR. ZACKS: No, that's fine.

24

25

1 (Defendant's Exhibit No. 7, Notice of
2 Default, was marked for
3 identification.)

4 BY MR. ZACKS:

5 Q I'll ask you if you recognize the first page?

6 A Yes, I do.

7 Q Can you tell me what it is?

8 A This is our demand letter when the borrower is
9 35 days past due.

10 Q When you review this, are there specific things
11 that you're looking for in the letter?

12 A Due dates and amounts.

13 Q These next series of pages are from the Fidelity
14 System?

15 A These are all from the Fidelity System, I think
16 the collection comments and the disbursements. These are
17 all from our system.

18 Q And again, these would be what you would look at
19 to verify that the amounts on the affidavits that you
20 signed would be correct?

21 A These are the amounts that the person preparing
22 the affidavit review. I review a payoff statement, which
23 summarizes all of these details.

24 Q And a payoff statement, is it going to be from
25 the Fidelity System, is it going to have a similar look?

1 A Yes.

2 Q And in the response to this request for
3 production, do you know if it's in here, the payoff
4 statement?

5 A No, I didn't print off a payoff statement.

6 Q After the Fidelity pages, I'll ask you, the next
7 bunch of documents appear to be from the origination of
8 the loan?

9 A Correct.

10 Q Again, is there anything in here that you would
11 review for the purposes of verifying amounts and an
12 affidavit?

13 A For an affidavit, no. There is nothing in the
14 servicing file, the origination part of the file that we
15 would review.

16 Q You have signed on occasion as an officer of
17 MERS?

18 THE WITNESS: Yes.

19 MS. PASKEWICZ: Objection to form, relevance.

20 BY MR. ZACKS:

21 Q Do you have a corporate resolution to sign on
22 behalf of MERS?

23 A Yes, I do.

24 MS. PASKEWICZ: Same objection.

25

1 BY MR. ZACKS:

2 Q This was a loan that was originated with
3 BankUnited. Is it common or uncommon for you to have a
4 MERS loan when it was originated by your company?

5 MS. PASKEWICZ: Object to the form, relevance.
6 Why are we going down this road with MERS?

7 THE WITNESS: Yeah. And it just varies on the
8 loans and if they're selling them off to MERS, or
9 should I say they're housing them off with MERS.

10 BY MR. ZACKS:

11 Q Do you know if there is a policy for when that
12 occurs?

13 MS. PASKEWICZ: Same objection.

14 THE WITNESS: No, I don't.

15 BY MR. ZACKS:

16 Q Did MERS have to give you a new corporate
17 resolution after the FDIC took over and then after they
18 became BankUnited?

19 MS. PASKEWICZ: Same objection.

20 THE WITNESS: Yes, they did.

21 BY MR. ZACKS:

22 Q Besides what you looked at in preparing the
23 affidavit, such as the Fidelity System and all the things
24 you used to verify the amounts, what did you look at today
25 or in preparation for today's deposition?

1 A I'm sorry?

2 Q I can clarify. Besides what you looked at when
3 you verified the amounts and the affidavit, what else did
4 you look at to prepare for today's deposition?

5 A Actually, nothing, just what we have here. And
6 I presented these two and made copies for Serena. I
7 didn't even go through them, that's why I'm going through
8 them now, because I haven't had a chance to even look at
9 them.

10 Q Okay. And for the record, you've indicated
11 Exhibit 7?

12 A Exhibit 7, correct.

13 Q And nothing else?

14 A No.

15 MR. ZACKS: Okay. I reserve the right to
16 continue the deposition when the documents requested
17 as part of the Duces Tecum are provided.

18 MS. PASKEWICZ: We object to that.

19 MR. ZACKS: I have to put it in there. I mean,
20 do you have any idea when you're going to provide
21 them?

22 MS. PASKEWICZ: Well, I've looked through it
23 now. Other than her resume and a corporate
24 resolution, we talked about all the documents. And
25 they're all screen shots that don't exist as a

1 physical document, nor is there any record of the
2 screen shots that existed a year ago. So there
3 aren't any documents for three through nine to the
4 extent that there was just a computer image that has
5 not been recorded anywhere.

6 Do you really think you need to redepose her on
7 her resume? If you really think you need to ask her
8 questions about those, I'm sure she can answer
9 questions about her job history now, if you think
10 it's necessary.

11 MR. ZACKS: So you're representing there were --

12 MS. PASKEWICZ: The screen shots of the Fidelity
13 System that are looked at have been produced. They
14 weren't produced specifically to this, they were
15 produced as a request for production. But the screen
16 shots of the Fidelity System have all been produced
17 as they exist now.

18 THE WITNESS: I will be happy to go over those
19 with you now, if you want.

20 MR. ZACKS: Well, what we asked for were the
21 ones that were reviewed in preparation for the
22 affidavit. If it's produced now, that's fine.
23 That's a different request at this point. It's a
24 year later.

25 MS. PASKEWICZ: Tina, you can correct me if I'm

1 wrong, but I don't believe that they were printed out
2 and kept in any form.

3 THE WITNESS: No, they're not. Because what
4 happens is Anne or Oscar, or whoever is preparing the
5 affidavit, they actually go through the disbursement
6 to total up the actual advance.

7 Say, for instance, the M.I. payment is \$399.69.
8 They don't automatically just put that down. That
9 may be only a portion of the advance. So they really
10 have to justify the true and correct amount of the
11 advance, and anything forward. And it's very easy to
12 work back from this pay history and disbursement
13 history to support what was put on the affidavit.

14 MR. ZACKS: Okay.

15 BY MR. ZACKS:

16 Q Well, you said you haven't reviewed it either,
17 is that correct, this Exhibit 7, this packet of
18 information?

19 A That's correct.

20 Q But you did review it back in March of 2009?

21 A I would have reviewed the payoff statement back
22 in March of 2009.

23 MR. ZACKS: Okay, if you want to go through
24 them, I'm sorry to take up your time.

25 MS. PASKEWICZ: It's either answer them now or

1 we have to come back.

2 BY MR. ZACKS:

3 Q If you could explain to me the first screen that
4 we're seeing, which is the second page of Exhibit 7.

5 A This is the beginning of the disbursement and
6 any debits or any credits to the account.

7 Q And the loan number, is that an internal number
8 or is that created when it's originated?

9 A The loan number is assigned at the time of
10 origination.

11 Q The time at the top right underneath the
12 borrower's name, is that the time this was printed up?

13 A On the right-hand side?

14 Q Yes.

15 A That's correct.

16 Q The time at the bottom left, do you know what
17 that is?

18 A The bottom left would be the time that it was
19 printed up. This is the last date that it was either
20 updated. Fidelity System is a batch system, so it's
21 always one day behind. And as for the time that's
22 represented there, I guess it's going to be the same time
23 in military time.

24 Q On the left side, underneath, where we're
25 looking at DLQH, it says MTGR-1 {sic}. Can you tell me

1 what is that?

2 A It's actually an "I," and it's the borrower's
3 last name, the first initial.

4 Q Okay. Right in the center before "Delinquency,"
5 it says QX. Is that a code for something?

6 A That, I honestly don't know.

7 Q Who would have more information on that?

8 A Maybe the I.T. department. I honestly don't
9 know what that QX is for. I've never had to use it.

10 Q What about 16-A, after "Ostrovsky," on the left
11 there?

12 A That represents that it's a conventional loan.

13 Q INV: 131?

14 A That's the investor number. The 131 is the
15 investor number, which is a BankUnited loan.

16 Q Again, it would have been a screen shot very
17 similar to this that you would have reviewed, even though
18 this is obviously later dates? This is, for all intents
19 and purposes, what you would have been looking at?

20 A And Darlene or Oscar or whoever prepared the
21 affidavit would be looking at this.

22 Q Okay. So do you know if they did anything to
23 verify that the investor was in fact 131 BankUnited?

24 A Not to my knowledge.

25 Q The late charges, can you just speak to those?

1 Is it common to charge different amounts for late charges?

2 A Yes, it is. It depends on the terms of the
3 note. If you like, I can go through the transactions that
4 are being disbursed and give you the numbers and what they
5 represent.

6 Q Okay.

7 A On the second page of Exhibit 7, the 310 is a
8 mortgage insurance premium for the MI company, and there
9 are a few of those on the page. On the other page, 312 is
10 for county taxes, so you'll see those disbursements as
11 well as a 310. On the third page, 351 is the hazard
12 insurance disbursement. And of course there's some more
13 in "my payments" because "my payments" are paid monthly.

14 It looks like that's all there is, is the MI
15 premiums being paid. Then there's another disbursement on
16 November 19, 2008 for property taxes in the amount of
17 \$5,046.93.

18 Q Why are the codes different on that, that
19 \$5,046? Is it just whether it's a credit or debit?

20 A The 116 represents that there's an actual
21 advance created, meaning those funds had to come out of
22 the corporate account in order to pay for the taxes.

23 Q The number of transactions marker or counter at
24 the bottom, what is that?

25 A That's going to be the total transactions that

1 were accounted for. These are screen prints. There's no
2 way to give you one great big log, so these are screen
3 prints. This is telling you based on everything that I've
4 printed up that we've had available in the system. There
5 were 81 transactions.

6 Q Well, is it time limited? You said based on
7 anything you could pull up.

8 A Yes. I tried to go back as far as I could. We
9 only have 25 months of payment histories, as well as
10 disbursements.

11 Q Where would payment histories and disbursements
12 prior to that 25 months be?

13 A We retain them on an F-drive, which are
14 accessible. However, on Friday, they weren't. The system
15 went down.

16 Q Is there a name for that? Is there a title, I
17 guess?

18 A We can just give you the histories that you want
19 to see, prior years' histories. We gave you the actual
20 histories from the date of the delinquency forward.

21 Q On the consolidated notes log, can you tell me
22 what that is, please.

23 A The consolidated note log is the notes of the
24 transactions and the occurrences on the account. Any
25 outbound calls or inbound calls are documented here.

1 Q The initials, would that reflect who was making
2 the contact?

3 A That's correct.

4 Q And that would be the one underneath what, ARM,
5 PIF?

6 A Yes. And I'm not good with everybody's
7 initials, so if you're going to question me on that --

8 Q Would you review this in preparing or verifying
9 an Affidavit of Indebtedness?

10 A On the collection notes, no, there would be no
11 reason for us to have to verify anything on collection
12 notes.

13 Q So the fact that a collection or delinquency
14 letter was sent, that would be somewhere else?

15 A No. Those letters should also be housed within
16 the notes. We can go back. I guess the best thing is to
17 start from the date of the delinquency on 4-9 and then
18 kind of work your way forward and give you a better
19 account of what happened on the loan.

20 Q Well, no, I'm not worried about that. You said
21 part of verifying that all conditions precedent had been
22 met was making sure that a delinquency letter was sent?

23 A Correct.

24 Q But you would actually look at the letter itself
25 and not the notes log, the notation that it was sent?

1 A Prior to it being transmitted to the attorney,
2 the notes are reviewed.

3 Q By yourself?

4 A Yes. Back then, it was me that was reviewing
5 them, each and every one. Not now, but back then.

6 Q There is one on February 18 of 2010, which is
7 reported to M.I. company?

8 A On 2-18, correct.

9 Q Can you tell me what that is?

10 A The M.I. companies require us to report to them
11 monthly of any delinquency on the account. And for prior
12 months, you should have one for each month of the
13 delinquency.

14 Q On March 11, 2009, it says certain documents
15 were sent via FedEx?

16 A Okay.

17 Q It says certain documents were sent via FedEx.
18 Do you keep records of that?

19 A The FedEx documents?

20 Q Yes.

21 A The actual person sending them does maintain the
22 FedEx.

23 Q And those would be kept where?

24 A They're usually housed within our system that we
25 have for our FedEx numbers.

1 Q On January 28, 2009, can you tell me what that
2 invoice is for?

3 A The DRI?

4 Q Right?

5 A That is for an invoice for attorney's fees and
6 costs.

7 Q And what's Friedman Cates?

8 A I'd have to check the file. I don't know.

9 Q On June 6, 2008, when it says the inspector
10 visited the property, can you tell me what that's for?

11 A When a loan is delinquent 45 days or more, we
12 have property inspections done on the property. We make
13 the attempt to have face-to-face contact with the
14 borrower, asking them to contact the office.

15 Q And again, after the Fidelity screen printouts
16 that we have, all of this stuff is from the origination?

17 A Yes, sir.

18 Q So there would be nothing in here that you
19 reviewed during your course of verifying the affidavit?

20 A No.

21 MR. ZACKS: Again, we reserve our right to
22 continue the depo if we get anything further related
23 to the duces tecum.

24 MS. PASKEWICZ: Same objection. Again, with
25 regards to the -- the only two documents that I think

1 there would be to produce would be her resume or her
2 corporate resolutions. We would ask that you at
3 least attempt to ask her questions if you think you
4 need to re-depose her based on either of those two
5 documents. We can make the attempt now, since we
6 only have two weeks and we're not going to have time
7 to come back.

8 I have one quick question.

9 CROSS EXAMINATION

10 BY MS. PASKEWICZ:

11 Q You had mentioned before on the delinquency
12 screen shots that Investor 131 indicated BankUnited. If
13 the loan had been sold to ARC, would that change?

14 A Yes.

15 Q And these were printed out as of April 2,
16 correct?

17 A Yes.

18 MR. ZACKS: Objection, leading.

19 MS. PASKEWICZ: That's all I have.

20 (Deposition concluded at 2:50 p.m.)

21

22

23

24

25

1 DATE: APRIL 7, 2010
TO: TINA BADO
2 C/O SERENA KAY PASKEWICZ, ESQ.
550 BILTMORE WAY, #700
3 CORAL GABLES, FLORIDA 33134
4 IN RE: BANKUNITED, FSB, VS. IOSIF OSTROVSKY, ET AL.
5 CASE NO.: 50-2008-CA-034979-XXXX-MB-AW

6 Please take notice that on MONDAY the 5th of
APRIL, 2010, you gave your deposition in the
7 above-referenced matter. At that time, you did not waive
signature. It is now necessary that you sign your
8 deposition.

As previously agreed to, the transcript will be
9 furnished to you through your counsel. Please read the
following instructions:

10 At page 65 of the transcript, you will find an
errata sheet. As you read your deposition, any changes or
11 corrections that you wish to make should be noted on the
errata sheet, citing page and line number of said change.
12 DO NOT write on the transcript itself. Once you have read
the transcript and noted any changes, be sure to sign and
13 date the errata sheet and return these pages. You need not
return the entire transcript.

14 If you do not read and sign the deposition within
a reasonable time, the original, which has already been
15 forwarded to the ordering attorney, may be filed with the
Clerk of the Court. If you wish to waive your signature,
16 sign your name in the blank at the bottom of this letter and
return it to us.

17 Very truly yours,
18
19

Philip May, Court Reporter
20 Conсор & Associates Reporting and Transcription
1655 Palm Beach Lakes Boulevard, Suite 500
21 West Palm Beach, Florida 33401

22 I do hereby waive my signature:
23 _____

24 cc via transcript:
25 file copy

1 THE STATE OF FLORIDA,)
2 COUNTY OF PALM BEACH.)

3

4

5

6 I, the undersigned authority, certify that
7 TINA BADO, personally appeared before me on the 5TH of
8 APRIL, 2010, and was duly sworn.

9

10

11 WITNESS my hand and official seal this 7TH day of
12 APRIL, 2010.

13

14

15

16

Philip W. May, Court Reporter

17

Notary Public - State of Florida

18

My Commission No. DD654067

19

My Commission Expires 3/24/2011

20

21

22

23

24

25

1 C E R T I F I C A T E

2
3 The State of Florida,)
4 County of Palm Beach.)
5

6 I, Philip W. May, Court Reporter, State of Florida
7 at Large, do hereby certify that TINA BADO, was by me first
8 duly sworn to testify the whole truth; that I was authorized
9 to and did stenographically report said deposition; that a
10 review of the deposition was requested; and that the
11 foregoing pages, numbered from 1 to 67, inclusive, are a
12 true and correct transcription of my shorthand notes of said
13 deposition.

14 I further certify that said deposition was taken
15 at the time and place hereinabove set forth and that the
16 taking of said deposition was commenced and completed as
17 hereinabove set out.

18 I further certify that I am not an attorney or
19 counsel of any of the parties, nor am I a relative or
20 employee of any attorney or counsel of party connected with
21 the action, nor am I financially interested in the action.

22 The foregoing certification of this transcript
23 does not apply to any reproduction of the same by any means
24 unless under the direct control and/or direction of the
25 certifying reporter.

IN WITNESS WHEREOF, I have hereunto set my hand
this 7TH day of APRIL, 2010.

Philip W. May, Notary Public
In and for the State of Florida
My Commission No. DD654067
My Commission Expires: 3/24/2011

24
25

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