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1 A. Two years.

2 Q. And then what did you do?

3 A. I went to work for Post Properties
4 actually in their construction group. And I was with
5 Post when I left to start law school in 1987.

6 Q. All right. And what did you do in their
7 construction group?

8 A. Punched out -- what's called punching out
9 apartments.

10 Q. In other words, you inspected them to
11 determine whether they were suitable for habitation?

12 A. That's correct.

13 Q. And you did that for two years?

14 A. Probably started in '86. Probably a year,
15 and then I left and went to law school.

16 Q. All right. And you went to John Marshall?
17 I mean, I'm sorry. To --

18 A. John Marshall Law School here in Atlanta.

19 Q. And when did you graduate?

20 A. 1990.

21 Q. And when did you pass the bar?

22 A. 1991.

23 Q. All right. And can you just tell me who
24 you practiced with and the general areas that you've
25 practiced with since then?

1 A. In 1991, I had my own office for a short
2 while. And then from '91 to '95 -- 1995 I moved to
3 San Diego. Not admitted into California, so I
4 practiced as a paralegal for a law firm in San Diego.

5 Q. What were your duties?

6 A. I worked on one case the Jack In The Box
7 food poison case. I read depositions.

8 Q. Other than the excitement of reading
9 depositions, did you --

10 A. Well, they had a system for this because
11 there were over 600 depositions in that case. They
12 had a coding system set up, so we read the
13 depositions and coded them.

14 Q. I see. And so that was basically all you
15 did?

16 A. That is correct.

17 Q. So you didn't have any exposure to any
18 other areas of law?

19 A. No, no real estate. No.

20 Q. All right.

21 A. I was there from '95 to '98.

22 Q. All right. And then what did you do?

23 A. Came back to Atlanta.

24 Q. And did you --

25 A. Practiced law with Bailey, B-a-i-l-e-y, &

1 Burditt.

2 Q. And who is Mr. Bailey? What's his full
3 name?

4 A. George L. Bailey.

5 Q. And is he still practicing law?

6 A. He's of counsel. I'm sorry. I don't know
7 the name of the firm. With a firm in Canton.

8 Q. All right. And how long were you in
9 partnership with him?

10 A. 1998 to 2000.

11 Q. All right. And what kind of law did --

12 A. That was my foray into real estate
13 closings.

14 Q. All right. And what kind of training did
15 you receive? How did you learn how to engage in or
16 undertake real estate closings?

17 A. Mr. Bailey had a legal assistant who
18 showed me how to -- the basics of clearing a title
19 and entering HUD statements and closing loans. So I
20 guess on-the-job training.

21 Q. All right. As part of your training, did
22 you actually go search titles in the courthouse?

23 A. No.

24 Q. So all of your training was in the office?

25 A. That is correct.

1 Q. And did you rely on others to search the
2 title?

3 A. That is correct.

4 Q. All right. Well, let's go on from there.
5 You were with Mr. Bailey from 1998 to 2000?

6 A. That is correct. Yes.

7 Q. And then what did you do?

8 A. I went to Omni National Bank.

9 Q. All right. What did you do at Omni
10 National Bank?

11 A. I was their in-house closing attorney.

12 Q. So with Omni National Bank, you engaged in
13 the practice of closing real estate transactions
14 which involved a loan from Omni National Bank?

15 A. Correct. They were investment loans,
16 what's called hard money loans, nonowner occupied.

17 Q. So these would be loans for business
18 purposes?

19 A. That is correct.

20 Q. Not personal family or household --

21 A. That is correct.

22 Q. -- loans?

23 A. Yes.

24 Q. So you were basically doing
25 commercial-type lending; is that correct?

1 A. For lack of a better term, yes.

2 Q. As opposed to consumer?

3 A. As opposed to residential, owner-occupied
4 residential refinances or buying a house that you're
5 going to live in, yes.

6 Q. All right. So you were dealing with,
7 what, apartment complexes or --

8 A. No. Single -- in most cases,
9 single-family homes, maybe duplexes that are being
10 bought by an investor to either resell or rent out.

11 Q. I see. Did your practice involve
12 foreclosure at all?

13 A. I did nothing with foreclosures other than
14 write notices for newspaper.

15 Q. So Omni would engage other attorneys to
16 actually complete the foreclosure?

17 A. One of Omni's officers was an attorney who
18 actually did the foreclosures.

19 Q. But that's something you didn't do?

20 A. That is correct.

21 Q. And how long were you with Omni National?

22 A. Until March of 2005 -- '4. I'm sorry.
23 March of 2004.

24 Q. And then what did you do?

25 A. Came to work for Mr. Stevens (indicating).

1 Q. All right. And what's your position at
2 Cooper & Stevens -- Stevens & Cooper?

3 A. Currently, I am a partner.

4 Q. All right. And how long have you been a
5 partner?

6 A. Since January.

7 Q. January of 2006?

8 A. Yes, sir.

9 Q. All right. And so you came to work in
10 March of 2004?

11 A. Yes.

12 Q. Here?

13 A. Yes.

14 Q. All right. So from March of 2004 to
15 December of 2005, what was your status with the firm?

16 A. I was an employee of Stevens, Maurer &
17 Cooper.

18 Q. And now the name is Stevens & Cooper. Is
19 that because Mr. Maurer has departed?

20 A. No. Now the name is Stevens, Cooper &
21 Burditt.

22 Q. Stevens, Cooper & Burditt?

23 A. Yes.

24 Q. All right. And so you are now a named
25 partner?

1 A. Yes, sir.

2 Q. Okay. That's your name in the Burditt?

3 A. Yes, sir.

4 Q. All right. And there was a Maurer who is
5 no longer here; is that correct?

6 A. Yes.

7 Q. Now, can you describe the type of work
8 you've done for Stevens & Cooper since you were
9 employed?

10 A. I close primarily investor loans. Omni
11 National Bank is now my main client, so I close
12 investor loans for Omni National Bank.

13 Q. All right. And when you say investor
14 loans, you're referring to the same thing you
15 described before. People who buy single-family
16 dwellings for the purpose of either renting or
17 reselling; is that correct?

18 A. Yes.

19 Q. All right. And is it your experience that
20 a number of those houses that are involved in these
21 loans have been through foreclosure?

22 A. Some of them are, yes.

23 Q. And let me ask you this: What kind of
24 additional training other than on-the-job training
25 have you received in connection with the practice of

1 real estate law in Georgia?

2 A. Well, of course, I do my CLE, continuing
3 legal education, 12 hours every year. Usually, the
4 courses that I attend are real estate related.

5 Q. All right. And are you familiar with the
6 Georgia Title Standards for attorneys?

7 A. Yes, sir.

8 Q. And have you studied those, those
9 standards?

10 A. I've read them more than once.

11 Q. All right. Now, in your current duties,
12 do you ever search title? Do you ever certify title?

13 A. No.

14 Q. Does --

15 A. I'm sorry. You asked two questions there.

16 Q. I'm sorry. First, did you ever go to the
17 courthouse and actually search title?

18 A. No.

19 Q. Do you certify title?

20 A. Yes.

21 Q. All right. And in your practice,
22 generally in your practice, do you rely on a
23 particular company or a group or outside group to
24 search title for you?

25 A. Yes.

1 Q. On the loans that you close?

2 A. Yes.

3 Q. And who is that?

4 A. Traditional Title Company.

5 Q. All right. You looked over at Mr. --

6 MR. STEVENS: Stevens.

7 Q. (By Mr. Porter) -- Stevens. Is there some
8 concern about disclosing who you use to certify
9 title?

10 A. I was not sure whether that was a --

11 Q. Do you have any concern about disclosing
12 who you use to search title?

13 A. No, I don't think so. I just kind of like
14 is that okay?

15 Q. Is there a dispute with --

16 A. No, not at all.

17 Q. -- these folks?

18 A. No.

19 Q. And do you continue to use them on a
20 regular basis?

21 A. They are our sole title searcher.

22 Q. In the answers to interrogatories, it was
23 stated that perhaps 95 percent of the title searches
24 for Stevens & Cooper are done by that company; is
25 that correct?

1 MR. STEVENS: The borrower?

2 THE WITNESS: Clarify that, please.

3 MR. PORTER: Do y'all want to join in on
4 this deposition? Would you like to appear?

5 MR. STEVENS: No. I apologize. I just --

6 MR. PORTER: Okay. If you want to listen
7 to the deposition, that's fine. But if you want
8 to testify, we'll be happy to swear you in and
9 we can put you over here, too. All right?

10 Otherwise, I would request that you keep
11 your comments to yourself and speak to your
12 attorney outside the deposition.

13 MR. STEVENS: I apologize. I thought I
14 was speaking to my attorney. I apologize. I
15 spoke too loudly.

16 MR. REED: He was speaking in a soft
17 voice.

18 MR. STEVENS: I spoke too loudly, and I
19 was not speaking quietly.

20 MR. PORTER: Well, I appreciate that.

21 MR. STEVENS: Yes, I will speak a little
22 bit quieter.

23 Q. (By Mr. Porter) All right. Let's start
24 over. If you discover a security deed of record in
25 which the seller cannot provide you with information,

1 what steps do you take then?

2 A. I would try to track down that lender and
3 get the requisite information as to whether that loan
4 is still open or is paid off.

5 Q. All right. And so you would contact the
6 lender that -- you would check your title, and then
7 the title has indicated that there is a security deed
8 out there. And then you would contact the lender
9 that is shown on the security deed or that the
10 security -- to which the security deed has been
11 assigned, and try to determine the status of the
12 loan; is that correct?

13 A. If there was a mortgage on the title and
14 the seller told me that he did not have a mortgage
15 and was not making any payments at that point, I
16 would call, try to contact the last lender listed on
17 the title, yes.

18 Q. All right. So the last holder of the
19 loan?

20 A. Yes.

21 Q. All right. Whoever that may be based on
22 what you found out at the record room; is that
23 correct?

24 A. Yes.

25 Q. All right. Just to back up on a couple of

1 Q. All right. And did you handle a closing
2 related to that property that occurred on or about
3 March 9th, 2002?

4 A. Yes.

5 Q. I'm sorry. 2005.

6 A. Yes.

7 Q. And were you involved in preparing that
8 loan for closing, I mean, that sale for closing?

9 A. Yes.

10 Q. And who was your client in that
11 transaction?

12 A. Goldmine Properties.

13 Q. And Goldmine Properties was buying the
14 property from New Hope Realty Investments; is that
15 correct?

16 A. Yes.

17 Q. And so you received an engagement from
18 Goldmine Properties to handle the purchase of the --
19 I'm going to refer to it as the property from New
20 Hope Investments; is that right?

21 A. Yes.

22 Q. And did you follow your standard
23 procedures for preparing to handle that closing?

24 A. Yes.

25 Q. And as part of those procedures, did you

1 request a title search be made of the property?

2 A. Yes.

3 Q. And did Traditional Title Services, Inc.
4 handle that transaction?

5 A. Yes.

6 Q. I mean, handle that title search?

7 A. Yes.

8 Q. And they provided you with a title
9 abstract?

10 A. Yes.

11 Q. And on that title abstract -- let me show
12 you a copy of Exhibit 14. Is this a copy of the
13 title abstract that you received from Traditional?

14 A. Before the Xs were put on the bottom, yes.

15 MR. PORTER: All right. Just for the
16 record, if there's no problem, I'm going to use
17 the same numbering system that we started with
18 yesterday and refer to the exhibits that we
19 identified yesterday and continue on so we just
20 have one set.

21 MR. PAUL: Yeah, that's fine. Why don't
22 you just --

23 MR. REED: That's fine with me if --

24 MR. PAUL: -- say Chase.

25 MR. REED: -- you want to just say Chase

1 exhibits.

2 MR. PORTER: I'm sorry. Chase's exhibits
3 in these depositions, and y'all can do what you
4 want with yours.

5 Q. (By Mr. Porter) So Exhibit 14 is a true
6 and accurate copy of the title abstract you received
7 from Traditional. I'm just going to call them
8 Traditional. It's Traditional Title Services, Inc.
9 I'm just going to call them Traditional. In
10 connection with the sale of the property; is that
11 correct?

12 A. Without the Xs at the bottom, yes.

13 Q. All right. And so you received -- without
14 these two Xs at the bottom, this is a title abstract
15 you received. And the date of this search says
16 March 2nd, 2005. Can you tell me the date you
17 received this title search?

18 A. There's nothing to indicate on here
19 exactly what day I would have received it.

20 Q. But you would have received it before the
21 March 9th closing; is that correct?

22 A. Yes.

23 Q. All right. Now, you would not close the
24 loan without having a title search on the property,
25 would you?

1 A. No, I would not.

2 Q. All right. And this is the title search
3 you received in order to close the loan; is that
4 correct?

5 A. This is a copy of the title search, yes.

6 Q. All right. And you relied upon this title
7 search in order to close the loan?

8 A. Yes.

9 Q. All right. And on that title search, it
10 says that the owner's name is Janet W. Williams; is
11 that correct?

12 A. Yes, it says owner, Janet W. Williams.
13 That is correct.

14 Q. All right. But that's not who you were
15 buying the property from. Is that -- I mean, that's
16 not who your client was buying the property from; is
17 that correct?

18 A. Correct. Yes.

19 Q. And that's because there had been a
20 transfer or a sale from Ms. Williams within a very
21 short period of time before your sale; is that
22 correct?

23 A. That is correct.

24 Q. And this abstract also shows the
25 outstanding mortgage information, that there's a

1 mortgage outstanding to Advanta National Bank, and
2 it's assigned to Emanuel Walker; is that correct?

3 A. Yes, sir.

4 Q. And so based on the title search that you
5 received from Traditional, you were aware prior to
6 the closing that the records of Fulton County showed
7 that the Advanta mortgage had been assigned to
8 someone named Emanuel Walker; is that correct?

9 A. Yes.

10 Q. All right. So you had actual knowledge of
11 that assignment; is that correct?

12 A. Yes.

13 Q. And what steps did you take to resolve or
14 to determine whether that loan was still outstanding?

15 A. I contacted the attorney who handled the
16 last -- who handled the transaction to my seller, and
17 requested information about the payoff of that
18 mortgage.

19 Q. All right. And how did you do that?

20 A. I probably called and requested a fax
21 number and sent a fax requesting that information.

22 Q. How many faxes did you send to Mr. -- and
23 who did you send it to?

24 A. I sent the fax request to Mr. Moreland,
25 Moreland & Lerman.

1 mortgage outstanding to Advanta National Bank, and
2 it's assigned to Emanuel Walker; is that correct?

3 A. Yes, sir.

4 Q. And so based on the title search that you
5 received from Traditional, you were aware prior to
6 the closing that the records of Fulton County showed
7 that the Advanta mortgage had been assigned to
8 someone named Emanuel Walker; is that correct?

9 A. Yes.

10 Q. All right. So you had actual knowledge of
11 that assignment; is that correct?

12 A. Yes.

13 Q. And what steps did you take to resolve or
14 to determine whether that loan was still outstanding?

15 A. I contacted the attorney who handled the
16 last -- who handled the transaction to my seller, and
17 requested information about the payoff of that
18 mortgage.

19 Q. All right. And how did you do that?

20 A. I probably called and requested a fax
21 number and sent a fax requesting that information.

22 Q. How many faxes did you send to Mr. -- and
23 who did you send it to?

24 A. I sent the fax request to Mr. Moreland,
25 Moreland & Lerman.

1 Q. And how did you determine that that's who
2 you should send the request to?

3 A. The seller, New Hope Mortgage, probably
4 told me that's who closed their purchase.

5 Q. All right. So based on the information
6 you received from the seller, you contacted Donald
7 Moreland; is that right?

8 A. Yes.

9 Q. And you requested a fax number from
10 Mr. Moreland?

11 A. That's my standard procedure if I do not
12 know it. I will call the law office and ask them for
13 their fax number.

14 Q. So you had never met Mr. Moreland?

15 A. That is correct, yes.

16 Q. Did you know anyone at the Moreland &
17 Lerman law firm?

18 A. No, I do not.

19 Q. Did you have any knowledge or idea about
20 the quality or skill set of Mr. Moreland or anyone at
21 his firm?

22 A. No, I do not.

23 Q. So you didn't know the quality of skill of
24 the attorneys you were dealing with?

25 A. No, I do not.

7

1 Q. Let me show you what has already been
2 identified as Exhibit 6. Is this a copy of a fax
3 that you sent to Donald Moreland prior to the sale of
4 the property to your client, Goldmine?

5 A. No, I did not send this to Goldmine.

6 Q. I'm sorry. Did you send it to
7 Mr. Moreland?

8 A. Yes.

9 Q. But you sent it before you closed the
10 loan, I mean, closed the sale from New Hope
11 Investments to Goldmine; is that correct?

12 A. Yes.

13 Q. Do you know when you sent it?

14 A. I do not. There's not a date on there.

15 Q. But it's your belief that you sent it
16 before you closed the sale of the property; is that
17 correct?

18 A. Yes.

19 Q. And do you recall having any telephone
20 conversations with Mr. Moreland concerning the title
21 of the property?

22 A. I do not recall any specific conversations
23 with Mr. Moreland.

24 Q. Do you think you had some?

25 A. I may well have called him and said I have

1 some title questions that I would like to fax over.

2 MR. PAUL: Read that question back,
3 please.

4 (The record was read by the reporter.)

5 Q. (By Mr. Porter) Well, let me restate it.

6 Do you think you had some telephone conversation with
7 Mr. Moreland prior to the closing of the sale of the
8 property from --

9 A. I think I might have had one.

10 Q. Are you aware of any other faxes that you
11 sent to Mr. Moreland other than Exhibit 6 that I've
12 shown you?

13 A. Yes.

14 Q. And can you identify those faxes?

15 MR. PORTER: Have we already introduced
16 those? Do you know?

17 MR. REED: Well, I mean --

18 MR. PORTER: All right. Don't. We'll go
19 through it the long way.

20 MR. REED: Yeah, there's one that I know
21 of that you made an exhibit to yesterday's
22 deposition.

23 Q. (By Mr. Porter) All right. Do you know
24 how many faxes you sent to Mr. Moreland?

25 A. I know I sent two.

1 MR. REED: Exhibit 11, John, to move it
2 along.

3 MR. PORTER: Thank you.

4 MR. REED: You're welcome.

5 Q. (By Mr. Porter) Is this the other
6 exhibit, I mean, the other fax of which you're aware?

7 A. No.

8 MR. REED: Could we use the actual exhibit
9 copies, the actual --

10 Q. (By Mr. Porter) All right. That is not?

11 A. No.

12 MR. PAUL: I apologize. Did the witness
13 testify --

14 MR. PORTER: I'm going to get that
15 straight right now.

16 MR. PAUL: Oh, okay.

17 Q. (By Mr. Porter) This is Exhibit 11 that
18 we identified yesterday. It states that it's to
19 Donald Moreland from Charles Burditt. Is it your
20 testimony that you did not send that fax to
21 Mr. Moreland?

22 A. No, that's not my testimony.

23 Q. All right. Did you send that fax to
24 Mr. Moreland?

25 A. That's my handwriting, yes.

1 Q. All right. And so you received a marked
2 up title -- what did you call it?

3 A. A marked up title commitment.

4 Q. A marked up title commitment from
5 Mr. Moreland stating how Mr. Moreland had resolved
6 certain title issues on the property; is that
7 correct?

8 A. That is correct.

9 Q. And you relied upon that representation;
10 is that correct?

11 A. Yes.

12 Q. All right. And when you relied upon that
13 represent -- let's turn to the title commitment,
14 specifically the second to third page. And there's
15 some handwriting on there. What issue did you rely
16 on this title commitment to resolve?

17 A. The open security deed in the original
18 amount of \$45,000.

19 Q. And what is the handwriting that -- how
20 did Mr. Moreland say this was resolved?

21 A. The handwriting states assign to Chase.
22 Paid off 4/15/04. Request for release sent 2/28/05.
23 90 to -- it's cut off on this copy, but it looks like
24 120-day turnaround. And there are some initials
25 there.

1 Q. All right. Now, that's what you relied
2 upon to close the sale of the property on March 9th?

3 A. That is.

4 Q. All right. Did you do any other kind of
5 investigation to determine whether Mr. Moreland was
6 right or not?

7 A. No.

8 Q. Did you make a call to Mr. Walker, Emanuel
9 Walker?

10 A. No.

11 Q. All right. So you relied upon the
12 representation or the statement Mr. Moreland made in
13 his title commitment to come to the conclusion that
14 the Advanta mortgage had been satisfied and was not a
15 title problem; is that correct?

16 A. Not entirely.

17 Q. All right. And what else did you rely
18 upon?

19 A. I relied on the fact that this title
20 commitment is written by Stewart Title Guaranty
21 Company.

22 Q. All right. So that because there was a
23 title commitment out there for Stewart Title written
24 by Mr. Moreland, you believe that that was sufficient
25 to -- sufficient for you to go ahead and close the

1 loan with an outstanding security deed of record; is
2 that correct?

3 A. Yes, that is correct.

4 Q. All right. And you relied on nothing else
5 besides that; is that correct?

6 A. That is correct, yes.

7 Q. All right. And in contacting
8 Mr. Moreland, did you engage Mr. Moreland to provide
9 any kind of title opinion or any kind of legal
10 research on this issue?

11 A. No.

12 Q. Did you offer to pay Mr. Moreland any kind
13 of compensation for providing you with a copy of the
14 title commitment?

15 A. No.

16 Q. Did Mr. Moreland in any way benefit, to
17 your knowledge, or have any kind of -- receive any
18 kind of benefit from the sale of the property from
19 New Hope Investments to Goldmine?

20 A. Not to my knowledge.

21 Q. All right. There wasn't anything as part
22 of your transaction that involved any kind of benefit
23 to Mr. Moreland; is that correct?

24 A. Yes, that's correct.

25 Q. All right. Now, did you ever go back and

1 talk to the person who searched the title or the
2 company that searched the title to try to reconcile
3 the fact that they showed that the loan had been
4 assigned to Emanuel Walker as opposed to Chase?

5 A. No.

6 Q. All right. So you made no attempt to
7 reconcile what was shown on the open record and what
8 you had been -- the information you had received from
9 Mr. Moreland; is that correct?

10 A. Yes, that's correct.

11 Q. Is there anything that prevented you from
12 taking that step in trying to reconcile why there was
13 an assignment of record to another party and why
14 Mr. Moreland thought Chase was the holder of the
15 loan?

16 A. I can't answer what Mr. Moreland might
17 have thought, but there are often unrecorded
18 assignments.

19 Q. All right. But did you make any effort to
20 determine whether they were unrecorded assignments?

21 A. If they're unrecorded, there's no way to
22 determine that.

23 Q. Well, did you call Chase?

24 A. No, I did not call Chase.

25 Q. All right. And you did not call

1 Mr. Walker; is that correct?

2 A. That is correct, I did not call

3 Mr. Walker.

4 Q. Are you aware that there were a chain of
5 assignments on record that ended up assigning the
6 loan to Mr. Walker?

7 A. Yes, I knew there was more than one
8 assignment.

9 Q. All right. Did you attempt to contact any
10 of the assignees that are of record?

11 A. No.

12 Q. Is there anything that would have
13 prevented you from doing that?

14 A. Yes.

15 Q. What was that?

16 A. In the case of Chase, I had no information
17 on their borrower. They would not have given me any
18 information regarding the loan. In the case of
19 Mr. Walker, I had no phone number or no way to know
20 who or where he was.

21 Q. Did you ever try to find him in the phone
22 book?

23 A. No. Walker is a very common name.

24 Q. But you never made any attempt to find
25 him?

11

1 search for the past 50 years for the property located
2 at 2270 Polar Rock Avenue; is that correct?

3 A. That appears to be correct, yes.

4 Q. All right. And that's what you intended
5 to have happen, isn't it?

6 A. Yes.

7 Q. And as part of that full title search, do
8 you know the steps that Traditional would take to
9 make that full title search?

10 A. No.

11 Q. So you don't know what indexes they would
12 look at or how they would -- the procedure they would
13 follow to provide you with a full title search?

14 A. No.

15 Q. But you're relying on them to accurately
16 give you a description of the status of the title as
17 of the effective date of the title abstract; is that
18 correct?

19 A. That is correct, yes.

20 Q. All right. Let me show you another
21 document that was given to us by your attorneys and
22 ask you if you recall this document and if you can
23 tell me what it involves?

24 A. This looks like the cover from a title
25 search as it is sent to us.

1 Q. All right. So this would be the cover
2 memo or letter that full title service would send to
3 you when it was -- at the time it was delivering to
4 you the title abstract; is that correct?

5 A. That is correct.

6 Q. All right. And this one is referring to
7 Order Number 05-539, which we've already established
8 is the file number for the sale of the 2270 Polar
9 Rock Avenue property; is that correct?

10 A. Correct.

11 Q. So this would be the cover letter from
12 Traditional Title Services delivering to you the
13 title abstract that they had created for you; is that
14 correct?

15 A. Correct.

16 Q. All right. So, and the date on this is
17 March 3rd, 2005. Is there any reason to believe that
18 you did not receive the title abstract on March 3rd,
19 2005?

20 A. I have no reason to not believe that.

21 Q. Okay. So it's probable that you did
22 receive the title abstract on or about March 3rd,
23 2005; is that correct?

24 A. Yes.

25 Q. So you were aware of the contents of the

1 discussed, indicating that Chase was the holder of
2 the loan?

3 MR. REED: Objection to the form of the
4 question. It wasn't a loan commitment.

5 Q. (By Mr. Porter) I'm sorry. Title
6 commitment.

7 A. Yes, he sent me the title commitment in
8 response to my request.

9 Q. All right. And as we were previously
10 discussing, you were aware that contrary to what
11 Mr. Moreland said, that there on record was a series
12 of assignments of the Advanta mortgage that
13 ultimately ended up in Emanuel Walker's name; is that
14 correct?

15 A. As of the time of the title examination,
16 the title examination reflects the last assignment to
17 Mr. Walker, correct.

18 Q. All right. So as on the record, the
19 records that were available to your title searcher,
20 the title on the record was in -- for the Advanta
21 security deed was held by Emanuel Walker; is that
22 correct?

23 A. That's correct.

24 Q. And that was inconsistent with what
25 Mr. Moreland told you; is that correct?

1 MR. REED: Objection to the form of the
2 question. What do you mean told him? You're
3 misstating facts in evidence.

4 Q. (By Mr. Porter) Okay. Mr. Moreland sent
5 you a title commitment that indicated that the loan,
6 that the mortgage was held by Chase and it had been
7 paid off; is that correct?

8 A. That is correct.

9 Q. And you had a title abstract that told you
10 that on the record, the security deed was held by
11 Emanuel Walker; is that correct?

12 A. That's not entirely correct, no.

13 Q. What is incorrect?

14 A. The title examination shows that the last
15 recorded assignment was held by Emanuel Walker.

16 Q. Well, that's what I said on record that
17 the holder of the -- on the record, the title record,
18 the holder of that security deed was Emanuel Walker;
19 is that correct?

20 A. That is correct, yes.

21 Q. All right. And you took no steps to
22 reconcile the inconsistent information you received
23 from Mr. Moreland with what the record title showed
24 to you on the abstract; is that correct?

25 MR. REED: Objection to the form of the

1 question. The testimony has not been that it's
2 been inconsistent information. In addition,
3 this question has been asked and answered a
4 couple of times previously. I'm going to allow
5 him to answer the question one more time, but
6 after that, I would ask that we move on. Go
7 ahead.

8 Q. (By Mr. Porter) Is that correct?

9 A. That is correct.

10 Q. All right. And previously, I asked you if
11 you had heard of a -- if you were aware that
12 Mr. Heath Williams at one point was the assignee of
13 record of the Advanta security deed, and you stated
14 that you were unsure of that; is that correct?

15 A. That is correct.

16 Q. All right. Let me let you look at what
17 was previously identified as Chase Exhibit 21 and ask
18 you if you have -- first of all, have you ever seen
19 that assignment before?

20 A. I will assume that I have, yes.

21 Q. Okay. And when have you seen it before?

22 A. Well, I don't recall, but I will assume it
23 was part of the title examination.

24 Q. All right. So the title examiner,
25 Traditional, would not only send you an abstract, but

1 MR. REED: Objection to the form of the
2 question. What do you mean told him? You're
3 misstating facts in evidence.

4 Q. (By Mr. Porter) Okay. Mr. Moreland sent
5 you a title commitment that indicated that the loan,
6 that the mortgage was held by Chase and it had been
7 paid off; is that correct?

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10 that on the record, the security deed was held by
11 Emanuel Walker; is that correct?

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15 recorded assignment was held by Emanuel Walker.

16 Q. Well, that's what I said on record that
17 the holder of the -- on the record, the title record,
18 the holder of that security deed was Emanuel Walker;
19 is that correct?

20 A. That is correct, yes.

21 Q. All right. And you took no steps to
22 reconcile the inconsistent information you received
23 from Mr. Moreland with what the record title showed
24 to you on the abstract; is that correct?

25 MR. REED: Objection to the form of the

1 I have never had any dealings with Heath Williams.

2 Q. All right. You know Heath Williams is an
3 attorney?

4 A. I do now.

5 Q. All right. And so if you had attempted to
6 find Mr. Williams, you could have very easily found
7 his phone number, could you not?

8 A. Yes.

9 Q. All right. But you did not attempt to
10 locate Mr. Williams; is that correct?

11 A. That is correct.

12 Q. All right. So, and it's your testimony
13 that you did not know how to contact Chase?

14 A. No, that is not my testimony.

15 Q. All right. But you didn't contact Chase?

16 A. That is correct.

17 Q. But you could have contacted Chase if you
18 had wanted to?

19 A. I could have called them, yes.

20 Q. All right. You could have done the same
21 thing that Mr. Moreland did, could you not?

22 A. Not exactly.

23 Q. Why not?

24 A. I was not privy to the information that
25 Mr. Moreland had to relay to Chase. It is my

1 representing at the closing?

2 A. No.

3 Q. So you just made some assumptions about
4 what Mr. Moreland knew and didn't know; is that
5 correct?

6 A. No.

7 Q. That's not true?

8 A. No, I did not assume what Mr. Moreland
9 knew or may not have known.

10 Q. You didn't know what he knew or didn't
11 know?

12 A. That is correct, I did not know what he
13 knew or did not know.

14 Q. And you didn't know what his relationship
15 was with any of the parties to the sale of the
16 property, did you?

17 A. That is correct.

18 Q. All right. So you made an assumption as
19 to whether he was representing the seller or not; is
20 that correct?

21 A. He may have been representing the buyer.

22 Q. You don't know?

23 A. I do not know.

24 Q. So, but in any event, somehow he
25 represented to you that he obtained information from

1 Chase concerning the loan; is that correct?

2 A. That is correct, yes.

3 Q. And you never asked him how he obtained
4 that information; is that correct?

5 A. No, because generally I know how someone
6 obtains that information.

7 Q. You assumed how he obtained the
8 information; is that correct?

9 A. Well, we generally, we all generally
10 obtain that information in the same manner.

11 Q. But that was your assumption. You
12 didn't --

13 A. That is my assumption, correct.

14 Q. So you didn't know whether Mr. Moreland
15 had actually contacted the right folks at Chase or
16 not; is that correct?

17 A. I have no way of knowing that, that is
18 correct.

19 Q. All right. You don't know the quality --
20 whether the information he received had any quality
21 to it at all, whether it was true or not; is that
22 correct?

23 A. That is correct.

24 Q. And you don't know whether it was
25 completely mistaken information from Chase; is that

1 correct?

2 A. That is correct.

3 Q. All right. And you made no effort to
4 ascertain whether this information was accurate or
5 not; is that correct?

6 A. That is correct.

7 Q. All right. I'm going to show you a copy
8 of an e-mail, I mean, a facsimile transmittal that we
9 received from your counsel. Do you recall having
10 anything to do with the sending of this fax?

11 A. No, it does not have my name on it.

12 Q. All right. So you didn't have anything to
13 do with sending this?

14 A. No.

15 Q. Do you recognize any of the handwriting on
16 it?

17 A. No.

18 Q. It says it's from Becky Lentz, and that is
19 an employee of this firm; is that correct?

20 A. Yes.

21 Q. All right. Have you read what's on the
22 fax?

23 A. I read it.

24 Q. All right. Now, is it your testimony that
25 you had nothing to do -- you weren't involved in

1 property to Goldmine?

2 A. Yes, I was.

3 Q. How many times had the property sold since
4 it was sold to Goldmine?

5 A. I only know of one.

6 Q. And what was that? Who else was involved?

7 A. Goldmine sold it to -- I'm going to take a
8 shot here -- Atlas somebody or Atlas Property, Atlas
9 Realty.

10 Q. Okay. Let me show you a HUD-1 settlement
11 statement and ask you if that refreshes your
12 recollection?

13 A. Oh, that's not after Goldmine. This is
14 the Goldmine purchase.

15 Q. All right. So we're looking at --

16 A. Can I clarify that answer?

17 Q. Yes, please.

18 A. I'm referring to Goldmine because Mike
19 Cherwenka is the president of Goldmine Properties.
20 However, this particular property was bought in a
21 land trust, but it is the same individual.

22 Q. So the actual title holder of this
23 property was Mike Cherwenka as the trustee?

24 A. Of the 2270 Polar Rock Trust, that is
25 correct.

1 Q. And the purchase price, the contract sale
2 price appears to be \$39,900?

3 A. That is correct.

4 Q. All right. Which the seller received
5 approximately \$37,586?

6 A. That is correct.

7 Q. And there's a seller's signature on this
8 document by a Mr. Ralph Lewis. Do you recall meeting
9 Mr. Lewis?

10 A. Yes, I know Mr. Lewis.

11 Q. All right. And you witnessed his
12 signature on this document?

13 A. No, I did not witness his signature on
14 this document. There is no witness by me. I signed
15 this document, also. Yes, I did see him sign it;
16 however, I did not legally witness his signature.

17 Q. I see. But you observed him signing it?

18 A. Yes, sir.

19 MR. PORTER: Let's identify this as
20 Exhibit 29.

21 (Chase Exhibit 29 was marked for
22 identification.)

23 Q. (By Mr. Porter) And did you issue a title
24 policy in connection with the sale of this property
25 from New Hope to -- is it Mr. Cherwenka?

1 A. There was an owner's title policy issued,
2 that is correct.

3 Q. All right. And this property was sold to
4 Mr. Cherwenka by virtue of a limited warranty deed;
5 is that correct?

6 A. That is correct.

7 Q. And I just showed you a copy of the
8 limited warranty deed. Is that your signature on the
9 notary line?

10 A. Yes.

11 Q. So you notarized this limited warranty
12 deed; is that correct?

13 A. Yes.

14 Q. So you witnessed the signature of
15 Mr. Ralph Lewis on this document?

16 A. No. I notarized Mr. Lewis's signature.

17 Q. But you observed -- in order to notarize
18 it, you had to observe the signature; is that
19 correct?

20 A. Yes, that is correct.

21 Q. All right. And can you explain the
22 difference between a limited warranty deed and a
23 general warranty deed?

24 A. A general warranty deed warrants the title
25 to all subsequent purchasers. A limited warranty

1 deed generally -- and I'm not exact on this -- limits
2 the warranties of the title from the person who is
3 selling it.

4 Q. All right. So there's a line at the
5 bottom right above the in witness whereof where it
6 says and the said grantor will warrant and forever
7 defend the right and title to the above-described
8 document unto said grantee against the claims of all
9 persons claiming under grantor but not otherwise; is
10 that correct?

11 A. That's correct.

12 Q. All right. And that is the limitation of
13 -- that is a limitation on the warranty deed; is that
14 correct?

15 A. That is correct.

16 Q. In other words, New Hope Realty
17 Investments is merely warranting that it has not
18 conveyed any interest in the property to anyone else;
19 is that correct?

20 A. In a manner of speaking, what they're
21 saying is they will warrant their title only to the
22 person purchasing directly from them.

23 Q. Well, doesn't it say they will defend the
24 right and title and interest to the property against
25 all claims of all persons claiming under the grantor?

1 A. Under the grantor, correct. Yes.

2 Q. Right. So, in other words, anyone who
3 asserts, that comes to the buyer and says I have an
4 interest in this property through New Hope Realty,
5 New Hope Realty is warranting that they will defend
6 against that; is that correct?

7 A. That is correct.

8 Q. But if someone comes in and says I took
9 title to this property before New Hope Realty
10 obtained title, then New Hope Realty is not
11 warranting against that sort of claim; is that
12 correct?

13 A. If I'm following you correctly, I will
14 agree.

15 Q. All right. So, in other words, if someone
16 had -- if a previous owner had conveyed an interest
17 to a third party and that third party showed up and
18 asserted a claim against the property after March 9th
19 of this sale, then New Hope would not be liable or
20 obligated to defend Mr. Cherwenka against that claim;
21 is that correct?

22 A. Sounds correct.

23 Q. All right. And so as far as any claim
24 asserted through the Advanta mortgage, New Hope
25 Realty Investments is not liable or does not -- is

1 not subject to any claim for breach of warranty of
2 this deed; is that correct?

3 MR. REED: Objection to the form of the
4 question. Do you mean the Advanta security
5 deed? Or you just said --

6 Q. (By Mr. Porter) All right. The Advanta
7 security deed. Any claim arising out of the Advanta
8 security deed would have occurred -- would have been
9 an event that occurred prior to the transfer of the
10 property from New Hope Realty to Mike Cherwenka; is
11 that correct?

12 A. That is correct.

13 Q. All right. And, therefore, New Hope
14 Realty under this limited warranty deed would not be
15 liable or obligated to defend against that claim; is
16 that correct?

17 A. I'm not sure I can answer that. And that
18 might be a jury question.

19 Q. So you believe that --

20 A. Generally under the terms of a limited
21 warranty deed, that is correct.

22 Q. All right. And what makes you think there
23 might be a jury question involved?

24 A. Well, it's possible that New Hope Realty
25 signed other documents stating there were no liens or

1 mortgages or whatever against the property.

2 Q. All right. So if they warranted that
3 there were no outstanding liens or mortgages, that
4 would be in a separate document; is that correct?

5 A. That's correct.

6 Q. All right. And you did the closing. Are
7 you aware of any such documents?

8 A. There was probably a property owner's
9 affidavit.

10 Q. All right. But do you know if there was
11 one?

12 A. I don't have the file in front of me, sir.
13 I'm assuming that there was. I close about 50 loans
14 a month, so I'm assuming that there was one in here.

15 MR. PORTER: All right. Let's identify
16 this as Exhibit 30.

17 (Chase Exhibit 30 was marked for
18 identification.)

19 MR. PORTER: Let's go off the record just
20 a second.

21 (Off the record.)

22 (Recess from 12:19 p.m. to 1:03 p.m.)

23 MR. PORTER: Before we start the
24 questions, one of the purposes of the 30(b)(6)
25 notice was to provide someone who could

1 Q. All right. So this property was sold by
2 New Hope Realty Investments to the buyer for \$39,900;
3 is that correct?

4 A. Yes.

5 MR. PORTER: All right. Let's identify
6 that as Exhibit 31.

7 (Chase Exhibit 31 was marked for
8 identification.)

9 Q. (By Mr. Porter) Now, can we stipulate
10 that that's a true and accurate copy of --

11 A. Yes.

12 Q. -- the real estate transfer tax in your
13 file?

14 A. Yes.

15 MR. REED: Yes.

16 Q. (By Mr. Porter) And was maintained in the
17 normal course of business?

18 A. Yes.

19 Q. And filed contemporaneously at the time of
20 the transaction in your files?

21 A. Yes.

22 MR. REED: And as far as it goes, we can
23 stipulate with regard to all these documents
24 that they are business records.

25 MR. PORTER: Okay.

1 Q. (By Mr. Porter) All right. Let me show
2 you another document and ask you if you can identify
3 this document?

4 A. Appears to be a limited warranty deed from
5 the 2270 Polar Rock Trust to Atlas Realty, Inc.

6 Q. All right. Now, we're talking about the
7 same property that was just sold to the 22 -- the
8 trust; is that correct?

9 A. That's correct.

10 Q. And this deed is dated the same date as
11 the deed into the trust; is that correct?

12 A. That's correct.

13 Q. So the trustee bought the property from
14 New Hope for 39,000 and then sold it immediately on
15 the same day to Atlas Realty; is that correct?

16 A. That's correct.

17 Q. All right. And this is a true and
18 accurate copy of the limited warranty deed from the
19 trust to Atlas Realty, Inc.; is that correct?

20 A. That's correct.

21 Q. And it's actually a recorded copy of it, a
22 copy of the one that was sent for recordation, and it
23 was recorded at Deed Book 39667, Page 349 of the real
24 estate records of Fulton County; is that correct?

25 A. That is correct.

1 MR. PORTER: All right. Let's identify
2 that as Exhibit 32.

3 (Chase Exhibit 32 was marked for
4 identification.)

5 Q. (By Mr. Porter) All right. Now, attached
6 to this deed is a title -- a description of the
7 property; is that correct?

8 A. Yes, there is a legal description attached
9 as Exhibit A.

10 Q. All right. And let me show you another
11 document and ask you if you can identify this
12 document for me?

13 A. It appears to be the transfer tax form
14 that would have gone with the recording of the deed
15 listed as Exhibit 32.

16 Q. All right. So this is a real estate
17 transfer tax form for the sale of the property from
18 the trust to Atlas Realty, Inc.; is that correct?

19 A. That is correct.

20 Q. All right. And in Number 1, the block
21 labeled Number 1, it has actual value of
22 consideration of \$64,000. Does that mean that the
23 property was sold to Atlas Realty for \$64,000?

24 A. That is correct.

25 Q. So on the same day that the trust bought

1 the property for \$39,000, it sold the property to
2 Atlas Realty, Inc. for \$64,000; is that correct?

3 A. That's correct.

4 Q. Now, do you have any --

5 MR. PORTER: Before we go any further, can
6 we identify this document as Exhibit 33?

7 (Chase Exhibit 33 was marked for
8 identification.)

9 Q. (By Mr. Porter) Now, can you tell me what
10 it is that would have occurred that would have
11 increased the value of the property from 39,000 to
12 64,000 in the same day?

13 A. I can, but I question the relevance.

14 MR. REED: Yeah.

15 Q. (By Mr. Porter) Well, that's great, you
16 can make an objection to relevance, but I want to
17 know the answer.

18 MR. REED: Answer the question to the
19 extent you can answer.

20 THE WITNESS: Okay. To my knowledge, it's
21 very common for -- Polar Rock Trust would only
22 relate to this property, but Mike Cherwenka does
23 about a hundred deals a year. He will put them
24 under contract and go in and do the work on them
25 before he closes. He probably did \$20,000 worth

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2 you another document and ask you if you can identify
3 this document?

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7 same property that was just sold to the 22 -- the
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11 the deed into the trust; is that correct?

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14 New Hope for 39,000 and then sold it immediately on
15 the same day to Atlas Realty; is that correct?

16 A. That's correct.

17 Q. All right. And this is a true and
18 accurate copy of the limited warranty deed from the
19 trust to Atlas Realty, Inc.; is that correct?

20 A. That's correct.

21 Q. And it's actually a recorded copy of it, a
22 copy of the one that was sent for recordation, and it
23 was recorded at Deed Book 39667, Page 349 of the real
24 estate records of Fulton County; is that correct?

25 A. That is correct.

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2 Atlas Realty, Inc. for \$64,000; is that correct?

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17 know the answer.

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19 extent you can answer.

20 THE WITNESS: Okay. To my knowledge, it's
21 very common for -- Polar Rock Trust would only
22 relate to this property, but Mike Cherwenka does
23 about a hundred deals a year. He will put them
24 under contract and go in and do the work on them
25 before he closes. He probably did \$20,000 worth

1 of work to the property.

2 Q. (By Mr. Porter) So you think that
3 Mr. Cherwenka was already out on the premises making
4 improvements to the premises prior to the closing?

5 A. I can only assume that, but yes.

6 Q. All right. And so did he tell you that?

7 A. Not that I recall.

8 Q. All right. So that's just an assumption
9 of yours?

10 A. Yes.

11 Q. And you've never looked at the Polar Rock
12 property, I mean, at this property, have you?

13 A. No.

14 Q. You never inspected it or had an appraisal
15 of it, have you?

16 A. No, that's not my job.

17 Q. Was an appraisal included in any of the
18 documents you received in relation to this property?

19 A. These were cash transactions. There was
20 no appraisal that I know of.

21 Q. All right. So within one day, you take a
22 -- and you handled both of these closings; is that
23 correct?

24 A. That is correct.

25 Q. All right. And so you observed that the

1 property was sold -- was purchased for 39,000 and
2 sold for 64,000 in the same day, and you made no
3 inquiry as to why that would occur; is that correct?

4 A. I think I know why, but I can't
5 substantiate it.

6 Q. All right. But you made no inquiry?

7 A. No, I did not.

8 Q. And if you could take a look at this
9 document and tell me what it is. Go ahead and look
10 through it.

11 A. It's an owner's policy of title insurance
12 issued to Atlas Realty, Inc. for the property at 2270
13 Polar Rock Avenue.

14 Q. All right. And did you --

15 A. The title policy was issued by Fidelity
16 National Title Insurance Company.

17 Q. All right. And you were the agent that
18 signed for it?

19 A. No, I'm not. It has the name of Eddie
20 Cooper on it.

21 Q. And who is Eddie Cooper?

22 A. Eddie Cooper is an attorney and a partner
23 here at Stevens, Cooper & Burditt.

24 Q. So there was another attorney at Stevens &
25 Cooper who issued the title, I mean, issued the title

1 insurance?

2 A. Yes.

3 MR. PORTER: All right. Let's identify
4 that as Exhibit 34.

5 (Chase Exhibit 34 was marked for
6 identification.)

7 Q. (By Mr. Porter) Now, normally, title
8 insurance is issued for the value of the property; is
9 that correct?

10 MR. REED: Objection. Well, go ahead.

11 THE WITNESS: I would say usually, yes.

12 Q. (By Mr. Porter) All right. Title
13 insurance --

14 A. On owner's coverage, yes.

15 Q. On owner's coverage. And usually, the
16 title insurance would not insure a property for an
17 amount higher than the value, the appraised value of
18 the property; is that correct?

19 MR. REED: Objection to the form of the
20 question. There's no evidence in the record
21 that title insurance would be based on the value
22 of the property. You know, it's frequently
23 based on the sale price of the property but not
24 the value of the property.

25 THE WITNESS: Generally, owner's coverage

1 A. They represented to me in writing that the
2 loan was paid off and would be cancelled per Chase,
3 and I accepted that representation.

4 Q. All right. And so is there anything else
5 that you contend that they were negligent about?

6 A. I don't know how to answer. I'm -- maybe
7 we can --

8 Q. Can you think of any other -- okay.
9 You've identified one. They sent you --

10 A. I was only concerned with one thing, was
11 this mortgage paid off or not. They told me that it
12 was. Not just told me. They represented on a marked
13 up title commitment that the mortgage was paid. I
14 accepted that as it is paid. That is -- I don't want
15 to say the absolute rule of thumb, but that is
16 standard in our industry what with properties being
17 sold sooner than they are showing up on records.

18 Q. All right. Now, is it your contention
19 that Mr. Moreland and Moreland & Lerman intentionally
20 misrepresented whether the security deed had been
21 paid off?

22 A. I have no way of knowing that whatsoever.

23 Q. You have no information that would
24 indicate that Mr. Moreland intentionally misled you?

25 A. I have no information to indicate that he

1 intentionally misled me, that is correct.

2 Q. And so it's your contention that simply
3 because the information was false that he gave you,
4 that Mr. Moreland had to be negligent in giving you
5 that information; is that correct?

6 A. Yes.

7 Q. Because you don't know what steps he took
8 to obtain that information?

9 A. That is correct.

10 Q. And it's your contention that even if it
11 was a simple, honest mistake, that Mr. Moreland and
12 Moreland & Lerman should be liable to your firm for
13 damages; is that correct?

14 MR. REED: Objection to the form of the
15 question. It calls upon this witness to draw a
16 legal conclusion. Even though he is an
17 attorney, he's not reviewed this matter with
18 regard to rendering an expert opinion on that
19 topic. Moreover, it calls upon this witness to
20 invade the province of the jury and render a
21 decision in the case. I will let him testify,
22 if he can. I will let him answer the question.

23 THE WITNESS: I can only relate it to what
24 I would do. If you called me and asked me if a
25 loan was paid and I sent you something in

1 mortgage being paid.

2 Q. Anything else?

3 A. I think it's actually the second page if
4 you consider that one is a cover letter, but the
5 first actual page of the title that's kind of the
6 recap.

7 Q. The title?

8 A. Of the title examination. I'm sorry.

9 Q. The title abstract?

10 A. Yes, sir.

11 Q. Anything else that you recall reviewing
12 last night?

13 A. I don't think I really looked at anything
14 else.

15 Q. Mr. Porter was asking you some questions
16 about your experience so I won't duplicate those, but
17 tell me this: When is the last time you have
18 actually physically checked a title in the
19 Fulton County records using the deed books and the
20 indexes down there?

21 A. Probably 1987 in law school.

22 Q. All right. And were you checking title?
23 Were you being paid to check titles or were you just
24 learning how to check titles?

25 A. No. I think in property class they sent

1 us over one day to see what it was like to run a
2 title and what you were looking at.

3 Q. And who went over there with you?

4 A. I don't remember the names. Probably
5 students, other students.

6 Q. And that's the last time you have checked
7 a title in the Fulton County record room?

8 A. Yes, sir.

9 Q. And that was not a title that was being
10 checked commercially, that is, for which you were
11 being paid by someone and obtaining a fee?

12 A. That is correct, it was not a full title
13 examination.

14 Q. So you have never checked a title in the
15 Fulton County deed room in terms of actually
16 certifying a title for someone?

17 A. That is correct.

18 Q. Have you ever checked a title in any deed
19 room as far as being in the position of certifying a
20 title to someone?

21 A. No.

22 Q. All right. Now, are you personally
23 authorized to issue title insurance policies? I
24 understand that Stevens & Cooper is, and I saw that
25 another gentleman here signed the policy that is an

1 us over one day to see what it was like to run a
2 title and what you were looking at.

3 Q. And who went over there with you?

4 A. I don't remember the names. Probably
5 students, other students.

6 Q. And that's the last time you have checked
7 a title in the Fulton County record room?

8 A. Yes, sir.

9 Q. And that was not a title that was being
10 checked commercially, that is, for which you were
11 being paid by someone and obtaining a fee?

12 A. That is correct, it was not a full title
13 examination.

14 Q. So you have never checked a title in the
15 Fulton County deed room in terms of actually
16 certifying a title for someone?

17 A. That is correct.

18 Q. Have you ever checked a title in any deed
19 room as far as being in the position of certifying a
20 title to someone?

21 A. No.

22 Q. All right. Now, are you personally
23 authorized to issue title insurance policies? I
24 understand that Stevens & Cooper is, and I saw that
25 another gentleman here signed the policy that is an

1 exhibit. Are you personally authorized to sign
2 titles?

3 A. Yes, I'm a signature of title policies.
4 Yes.

5 Q. All right. And when did you obtain that
6 authorization?

7 A. I don't know the exact date, but probably
8 shortly within a few months of coming to work here
9 for Mr. Stevens in 2004.

10 Q. All right. When is the last time that you
11 have physically been down to the deed room in Fulton
12 County?

13 A. I can't say when, but I can say that I
14 have not been down there in the time that I've been
15 employed with Stevens & Cooper. So if I haven't been
16 down there recently, it certainly has been several
17 years.

18 Q. All right. I may by accident give you a
19 piece of paper that's already been identified as an
20 exhibit, but I will try not to do that.

21 MR. PAUL: So I'll ask the reporter to
22 make that Defendants' Exhibit 2.

23 (Defendants' Exhibit 2 was marked for
24 identification.)

25 Q. (By Mr. Paul) Okay. Look at Defendants'

1 Exhibit 2 and tell me what that is, if you know,
2 please.

3 A. It appears to be a sales agreement for the
4 property at 2270 Polar Rock Avenue. The seller is
5 New Hope Realty Investments. The buyer in this case
6 is signed as Mike Cherwenka, president.

7 Q. All right. Now, the fax number that
8 appears at the top where it says March 1, 2005,
9 11:28, the number (770) 451 -- looks like 0033, what
10 fax number is that?

11 A. I have no idea.

12 Q. Is Mike Cherwenka one of your regular
13 clients or one of the firm's regular clients?

14 A. Yes, sir.

15 Q. All right. And what about New Hope Realty
16 Investments, is it a regular client?

17 A. I would not say regular client, no.

18 Q. Have you closed sales involving
19 HomeVestors and New Hope Realty Investments before
20 the one that is at issue here?

21 A. I'm sure I have closed at least one other
22 loan for New Hope or sale for New Hope Realty
23 Investments.

24 Q. And when was that?

25 A. I honestly don't know.

1 MR. REED: And then, you know, like I say,
2 have at it, ask any questions you want about it.
3 But that -- you know, and ask any questions you
4 want about the fax numbering. But that's my
5 understanding of how the fax numbering gets to
6 be the way it is. Or you can just ask him is
7 what Reed testified to right?

8 MR. PAUL: Would you mind letting us get
9 just one more copy of that and we will make this
10 the exhibit?

11 (Recess from 2:45 p.m. to 2:47 p.m.)

12 (Defendants' Exhibit 8 was marked for
13 identification.)

14 Q. (By Mr. Paul) Mr. Burditt, let's look at
15 what has been marked as Defendants' Exhibit 8. At
16 our request, you went back to your file. And tell us
17 what you did, in your own words, to produce for us
18 Defendants' Exhibit 8.

19 A. I went in the file and pulled out what we
20 had for a title, and we thought, well, we don't know
21 if sometimes we pulled it apart to look at stuff
22 or -- so we went back to the computer where they're
23 stored, all the original title searches, and had it
24 reprinted out of the computer just as it would have
25 been sent to us by Traditional.

1 Defendants' Exhibit 8, you see this fax information
2 up at the top which says March 3, 2005, 9:00 o'clock
3 a.m. Do you see that?

4 A. Yes, sir.

5 Q. And then further to the right-hand corner,
6 Number 260 -- Number 2643, P. 2 21. Do you see that?

7 A. Yes, sir.

8 Q. All right. Having refreshed yourself
9 about the procedure by looking at the file, tell us
10 what your understanding of the fax number is that
11 shows in the left-hand corner.

12 A. I don't know, sir.

13 Q. Not a fax number but the fax information.

14 A. I don't know, sir. Those aren't our
15 numbers. They are not generated by us. And, quite
16 frankly, I'm not that versed in what faxes do.

17 Q. All right. But at any rate, Page 4 and
18 all of the pages in Defendants' Exhibit 8 are pages
19 that you actually received from Traditional Title;
20 right?

21 A. That is correct.

22 Q. So Pages 4 and 5, which are a quitclaim
23 deed that says it is filed October 1, '98, can you
24 relate that to your abstract, your title summary?

25 A. Yes. On the first page of the abstract,

1 you will see deed information. It's the last
2 recorded deed in their title says Ronald Williams aka
3 Ronald Douglas Williams; grantee, Janet W. Williams.

4 Q. All right. And then the page, the next --
5 let's see. Page 6 of Defendants' Exhibit 8, can you
6 relate that to anything in the summary of the
7 abstract?

8 A. When you say Page 6, it's -- I don't know
9 quite sure where. But at the top, there's some
10 numbers 2641511 on the left-hand side?

11 Q. Correct.

12 A. That is a warranty deed, and it appears to
13 be from the Secretary of Veterans Affairs to a Ronald
14 Douglas Williams. If you went back to the summary,
15 the second page of the summary under the chain of
16 title, last item on the second page of the summary
17 shows that there was a deed from the Administrator of
18 Veterans Affairs to Ronald Douglas Williams.

19 Q. All right. If you go to the next page of
20 Defendants' Exhibit 8, it says security deed, and the
21 recording book and page number at 25447, Page 313.
22 Do you see the page I'm looking at?

23 A. Yes, sir.

24 Q. Can you relate that security deed to
25 something that appears in the summary of the

1 abstract?

2 A. First page of the summary and the first
3 item under mortgage information is a mortgage from
4 Janet W. Williams to Advanta National Bank, which
5 appears to be the same information that is actually
6 on this security deed that you're referring to as
7 Page 6, I think.

8 Q. And then if you turn to a page of
9 Defendants' Exhibit 8 that is captioned lost note
10 affidavit, do you see that page?

11 A. Yes, sir.

12 Q. Are you able to relate the recorded lost
13 note affidavit to something that appears in the
14 summary of abstract?

15 A. In the summary of abstract, it says at the
16 very bottom of that one particular section -- on the
17 first page of the summary and under the Advanta
18 National Bank mortgage, it says affidavit at
19 Book 37769, Page 92.

20 Q. All right.

21 A. This appears to be that affidavit that is
22 referred to.

23 Q. And did you review the lost note affidavit
24 when Traditional Title forwarded you this title
25 abstract?

1 A. Yes.

2 Q. All right. Are you familiar with lost
3 note affidavits?

4 A. I may have seen one or two. Actually, I'm
5 not sure. This may be the first recorded one I've
6 ever seen.

7 Q. Are you familiar with the Georgia statute
8 on lost note affidavits?

9 A. No, sir, I'm not.

10 Q. Do you know what the Georgia statute
11 requires for enforcement of a lost note?

12 A. No, sir, I'm not familiar with the
13 statute.

14 Q. What did you do when you reviewed the lost
15 note affidavit?

16 A. Well, I read it. To me, it says that
17 Chase lost their note.

18 Q. All right. Well, Paragraph 3 says Chase
19 desires to assign the note. Do you see that?

20 A. Correct. It says they desire to assign
21 it, yes.

22 Q. And Paragraph 1 says they've lost it;
23 right?

24 A. That is correct.

25 Q. And is there anything in the lost note

1 affidavit that enables you to determine the present
2 outstanding balance of the lost note as of March 3,
3 2005, when you were receiving this information?

4 A. No. The only number I see on there is the
5 original principal amount.

6 Q. Right. And the date of the lost note
7 affidavit is what?

8 A. 20th day of May, 2004.

9 Q. All right. Look next at the paper in
10 Defendants' Exhibit 8 that is called corporate
11 assignment of mortgage. And that is an assignment
12 from Heath W. Williams, LLC, as assignor, to Emanuel
13 Walker, as assignee. Do you see that?

14 A. Yes, sir.

15 Q. Are you able to relate that assignment of
16 mortgage to anything that appears in the summary of
17 abstract?

18 A. On the first page of the recap under
19 mortgage information in the first item, Advanta
20 National Bank, Janet W. Williams, amount 45,000, it
21 says assigned to Emanuel Walker.

22 Q. All right. Did you read this corporate
23 assignment of mortgage from Heath W. Williams, LLC to
24 Emanuel Walker when you received it on about March 3,
25 2005?

1 A. Yes, sir.

2 Q. And what was your understanding of the
3 effect of that document?

4 A. As of June 2004, there was an assignment
5 from Heath Williams to Emanuel Walker of the note.

6 Q. And did you compare the date on the lost
7 note affidavit of May 20, 2004, to the date of the
8 assignment of June 10, 2004, when you reviewed these
9 two documents?

10 A. No.

11 Q. Do you have an understanding of whether an
12 assignee under Georgia law can take an assignment of
13 a lost note and enforce the note, that is, a note
14 that was lost before the assignee took an assignment?

15 A. I do not know that, no.

16 Q. All right. Did you ask anybody?

17 A. No, sir.

18 Q. Now, when you looked at an assignment from
19 Heath W. Williams, LLC to Emanuel Walker and compared
20 that assignment to a lost note affidavit by Chase
21 signed 20 days earlier --

22 A. Actually, sir, it was signed the same day.

23 Q. Okay. Signed the same day. Well, the
24 lost note affidavit is dated May 20th, 2004, isn't
25 it?

1 A. The lost note affidavit is dated May 20th,
2 2004. It says date of assignment May 20th, 2004.

3 Q. No. Date of assignment, you're looking at
4 the assignment from Williams to Walker?

5 A. Well, that was the last one you told me to
6 look at. I'm sorry.

7 Q. No. That's what I'm saying. It says
8 Heath W. Williams, LLC June 10, 2004, doesn't it?
9 It's signed on June the 10th, 2004, by Heath
10 Williams, isn't it?

11 A. Oh, all right. I see that, yes.

12 Q. All right.

13 A. I was -- go ahead. I'm sorry.

14 Q. When you looked at the lost note affidavit
15 signed by Chase on May 20, 2004, and the assignment
16 of the mortgage signed on June 10, 2004, by Heath W.
17 Williams, LLC, did it cause you to wonder how Heath
18 W. Williams got into the chain, the assignment chain
19 on the Chase Mortgage note?

20 A. No.

21 Q. Why? Because you don't have in your
22 abstract an assignment from Chase to Heath Williams,
23 do you?

24 A. Okay. You don't have an assignment from
25 Heath Williams to -- from Chase to Heath Williams.

1 Okay.

2 Q. So is this the first time you've noticed
3 that?

4 A. No.

5 Q. All right. So you know before today that
6 your abstract didn't include an assignment into Heath
7 Williams, LLC, an assignment of mortgage?

8 A. Okay.

9 Q. I mean, did you know that before today?

10 A. Yes.

11 Q. All right. And how did you find that out?

12 A. How did I find out that my abstract did
13 not have an assignment from Heath Williams -- from
14 Chase to Heath Williams?

15 Q. Uh-huh.

16 A. I guess because it's not here.

17 Q. All right. And so that was the reason,
18 one of the reasons I was asking to be sure you got
19 your full file. Your file did not contain the
20 intermediate assignments between Chase and Heath
21 Williams when you got your abstract file?

22 A. That's correct. And I think I addressed
23 that earlier today about sometimes we only get the
24 last assignment.

25 Q. All right. So did you ask Traditional

1 Title to take any action to get you a complete chain
2 of assignments of the Chase mortgage when you
3 realized, as you say you did in March of 2005, that
4 you did not have a full chain of assignments?

5 A. No.

6 Q. You did not ask for that?

7 A. No, sir.

8 Q. And why is it that you didn't ask?

9 A. Because I asked Don Moreland what he did
10 about the mortgage when he sold the property.

11 Q. Well, let's see. You got this title
12 abstract from Traditional Title on March the 3rd,
13 2005; right?

14 A. Yes, sir.

15 Q. And you testified that you spoke -- did
16 you testify that you absolutely remember speaking
17 once to Donnie Moreland or you think you may have
18 spoken once to Donnie Moreland?

19 A. I said I think I may have called and said
20 I have some questions about the title. I would like
21 to fax them over. Could you please give me your fax
22 number? I'm assuming that's the conversation I had.

23 Q. But as you sit here today, are you able to
24 actually swear to the jury that you have a personal
25 recollection today of speaking to Donnie Moreland?

1 Are you able to swear that to the jury today?

2 A. No, sir.

3 Q. All right. And so you're not able to
4 swear to the jury anything that you said to Donnie
5 Moreland since you can't swear that you actually
6 spoke with him; right?

7 A. That is correct.

8 Q. All right. And you can't swear to the
9 jury anything that Donnie Moreland said to you as you
10 sit here today?

11 A. That's correct.

12 Q. Now, as you sit here today, are you able
13 to swear that you spoke to any other person in Donnie
14 Moreland's office between March the 3rd and when you
15 closed this transaction on March the 9th, 2005?

16 A. No, sir.

17 Q. Get Chase Exhibit 7 in front of you,
18 please.

19 A. Yes, sir.

20 Q. Earlier, you said that you received a copy
21 of the first -- actually, that you received a copy of
22 a second page of Chase Exhibit 7, is that correct,
23 from Donnie Moreland's office?

24 A. I'm sorry, sir. You said I received a
25 copy of the second page? The first and second page

1 A. I can't answer that question, sir. I
2 don't know. I keep my own closings. I schedule my
3 own closings, and I don't have anything to do with
4 other closings that go on here in the firm. So
5 whether they have a master log for all the
6 closings -- I only keep track of my closings on my
7 calendar that I'm closing this, this, and this
8 tomorrow. I'm closing this today at 3:00 o'clock and
9 this at 4:00 o'clock.

10 Q. But as a partner in the firm here, you
11 don't know whether your firm keeps a --

12 A. I was not a partner at the --

13 Q. Excuse me. Let me finish. As a partner
14 in the firm now, you don't know whether the firm
15 keeps a log of the closings that they do, either a
16 historic log or a scheduling log to say you're in
17 Conference Room 5 and you're in Conference Room 3 for
18 the day or whatever? You don't know one way or the
19 other?

20 A. No, sir.

21 Q. All right. So up until the very day that
22 you closed the sale of the 2270 Polar Rock Avenue
23 property twice, that is, once from New Hope to Polar
24 Rock Trust and once from Polar Rock Trust to Atlas,
25 up until that very day of closing, you did not know

1 how Donnie Moreland had dealt with the open security
2 deed that showed of record in your title abstract;
3 right?

4 A. That is correct.

5 Q. All right. And as of the day of closing,
6 you had not taken any action to have Traditional
7 Title link up for you the chain of assignments after
8 you saw that Chase Mortgage had lost the note and
9 signed the lost note affidavit and after you saw
10 someone that didn't have an assignment from Chase,
11 had assigned the note to someone else, you didn't
12 have Traditional take any further action?

13 A. No, sir.

14 Q. And at no time prior to the March 9, 2005
15 closings, the two closings you did of the 2270 Polar
16 Rock property, did you attempt to contact Chase
17 directly; correct?

18 A. That is correct, I did not try to contact
19 Chase directly.

20 Q. And at no time prior to the closing did
21 you try to contact Emanuel Walker, who was shown to
22 have taken an assignment of the mortgage in your own
23 title abstract; right?

24 A. That is correct.

25 Q. And at no time did you try to contact

1 Heath Williams, LLC, either the law firm or the
2 individual, who was shown as having assigned the
3 Chase mortgage, that is, at no time prior to the
4 closing?

5 A. That is correct.

6 (Defendants' Exhibit 9 was marked for
7 identification.)

8 Q. (By Mr. Paul) Defendants' Exhibit 9 is
9 another copy of the assignment from Heath W.
10 Williams, LLC to Emanuel Walker of the Chase
11 mortgage, and it has a handwritten notation.
12 Note: Heath, quote, Williams, closed quote, same
13 last name as Janet and Roshanda. Whose handwriting
14 is that?

15 A. I don't know, sir. It's not mine.

16 Q. Has Stevens & Cooper done any
17 investigation to determine whether or not Heath
18 Williams has any relationship to Roshanda Williams,
19 that is, any blood relationship by blood or marriage?

20 A. I have no knowledge of that, sir, no.

21 Q. That is, you don't know whether Stevens &
22 Cooper has done an investigation?

23 A. I do not know, that is correct.

24 Q. And you don't have any knowledge yourself
25 one way or the other?

1 how Donnie Moreland had dealt with the open security
2 deed that showed of record in your title abstract;
3 right?

4 A. That is correct.

5 Q. All right. And as of the day of closing,
6 you had not taken any action to have Traditional
7 Title link up for you the chain of assignments after
8 you saw that Chase Mortgage had lost the note and
9 signed the lost note affidavit and after you saw
10 someone that didn't have an assignment from Chase,
11 had assigned the note to someone else, you didn't
12 have Traditional take any further action?

13 A. No, sir.

14 Q. And at no time prior to the March 9, 2005
15 closings, the two closings you did of the 2270 Polar
16 Rock property, did you attempt to contact Chase
17 directly; correct?

18 A. That is correct, I did not try to contact
19 Chase directly.

20 Q. And at no time prior to the closing did
21 you try to contact Emanuel Walker, who was shown to
22 have taken an assignment of the mortgage in your own
23 title abstract; right?

24 A. That is correct.

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1 Heath Williams, LLC, either the law firm or the
2 individual, who was shown as having assigned the
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14 is that?

15 A. I don't know, sir. It's not mine.

16 Q. Has Stevens & Cooper done any
17 investigation to determine whether or not Heath
18 Williams has any relationship to Roshanda Williams,
19 that is, any blood relationship by blood or marriage?

20 A. I have no knowledge of that, sir, no.

21 Q. That is, you don't know whether Stevens &
22 Cooper has done an investigation?

23 A. I do not know, that is correct.

24 Q. And you don't have any knowledge yourself
25 one way or the other?

1 A. I do not, sir.

2 Q. Now, have you at any time in your life
3 spoken with Heath Williams?

4 A. No, sir.

5 Q. Do you know if anyone at Stevens & Cooper
6 on behalf of Stevens & Cooper has spoken with Heath
7 Williams related to this matter other than what you
8 may know from a conversation with your lawyer?

9 That is, if your lawyer has told you
10 something, you don't need to tell me, but if you know
11 in any other way whether anybody at Stevens &
12 Cooper --

13 A. No, sir.

14 Q. And you've never spoken with Roshanda
15 Williams?

16 A. No, sir, I have not.

17 Q. And have you ever tried to locate Roshanda
18 Williams?

19 A. No, sir.

20 Q. And do you know if anyone has tried to
21 locate Roshanda Williams on behalf of Stevens &
22 Cooper?

23 A. I have no knowledge of that fact, sir.

24 Q. And Emanuel Walker, you've never spoken
25 with Emanuel Walker?

1 A. No, sir.

2 Q. And do you know if anyone on behalf of
3 Stevens & Cooper has ever spoken to Emanuel Walker?

4 A. I have no knowledge of that, sir.

5 Q. Turn to Chase Exhibit 29, if you will,
6 please.

7 A. Yes, sir.

8 Q. All right. Chase Exhibit 29 is the HUD
9 closing statement form for the sale that you closed
10 on March 9, 2005, in which New Hope Realty
11 Investments, Inc. was the seller and 2270 Polar Rock
12 Trust was the purchaser; correct?

13 A. That is correct, sir.

14 Q. And as I understand it, Stevens & Cooper
15 has closed transactions for both New Hope Realty
16 Investments and also for Mike Cherwenka, who was the
17 trustee of 2270 Polar Rock Trust; right?

18 A. Yes, I know we've closed many transactions
19 for Mike Cherwenka. I think I did another one with
20 New Hope Realty Investments.

21 Q. And I think you said in response to
22 Mr. Porter's questions that you knew Ralph Lewis;
23 right?

24 A. That is correct.

25 Q. And how do you know him?

1 Q. I think isn't it exactly the same name?

2 A. Appears to be spelled the same, yes, sir.

3 Q. All right. Now, how did it come to your
4 attention that there had been a foreclosure by
5 Emanuel Walker on the 2270 Polar Rock Road property?

6 A. To the best of my recollection, Atlas
7 Realty called and said they were working on the
8 property and somebody came by and said that they had
9 bought it at foreclosure.

10 Q. Did Atlas Realty call you?

11 A. Yes, sir.

12 Q. And who at Atlas called you?

13 A. I do not remember, sir.

14 Q. And after you got the lump out of your
15 stomach, what was your next action?

16 A. I'm pretty sure I went to Mr. Stevens'
17 office and told him that this is --

18 Q. Not a good day?

19 A. I just received a phone call and this is
20 what I've heard.

21 Q. All right. And so --

22 A. I may have said to Atlas to make sure that
23 they present you with some kind of papers showing
24 that they -- and not just walking by saying that they
25 bought it.