

IN THE CIRCUIT COURT FOR MANATEE
COUNTY, FLORIDA. CIVIL DIVISION

CASE NO. 412007CA007993XXXXXX

HSBC BANK USA, NATIONAL ASSOCIATION, AS
TRUSTEE FOR LUMINENT MORTGAGE TRUST
2006-6 ,

Plaintiff,

vs.

ANTONIO DE FREITAS; CAMILA DE FREITAS;
BARRINGTON RIDGE HOMEOWNERS
ASSOCIATION, INC.; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. MIN NO.
1000460-0012835542-1; UNKNOWN TENANT NO. 1;
UNKNOWN TENANT NO. 2; and ALL UNKNOWN
PARTIES CLAIMING INTERESTS BY, THROUGH,
UNDER OR AGAINST A NAMED DEFENDANT TO
THIS ACTION, OR HAVING OR CLAIMING TO
HAVE ANY RIGHT, TITLE OR INTEREST IN THE
PROPERTY HEREIN DESCRIBED,

Defendants.


NOTICE OF FILING TRANSCRIPT OF AUGUST 30, 2010
HEARING TO SHOW CAUSE

The Plaintiff, HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR
LUMINENT MORTGAGE TRUST 2006-6, by its undersigned attorneys, files the attached Transcript of
August 30, 2010 hearing to show cause.

I HEREBY CERTIFY that a copy of the foregoing Notice of Filing was mailed this 9th day of

September, 2010, to all parties listed on the attached Service List.

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IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA

HSBC BANK USA,)	Case No.: 2007-CA-007993
)	
Petitioner)	
)	
v.)	August 30, 2010
)	
DE FREITAS,)	
)	
Respondent)	Honorable Janette Dunnigan
_____)	

HEARING

APPEARANCES:

FOR PLAINTIFF: Roy A. Diaz, Esq.

Transcribed by:

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1 HEARING

2
3 BAILIFF: All rise please. This court is again in
4 session. Judge Janette Dunnigan presiding.

5 JUDGE: You may be seated. Good afternoon.

6 ATTORNEY: Good afternoon Your Honor.

7 JUDGE: Uh, this, I am calling case number 2007-CA-
8 7993. HSBC Bank USA National Association as Trustee, for
9 Luminent Mortgage Trust, 2006-6 as the Plaintiff versus
10 Antonio De Freitas as the defendant. And, well, Camilia De
11 Freitas, both of you are present? Barrington Ridge
12 Homeowners Association. Um, actually this doesn't
13 necessarily, um, require them. If you'll just have them
14 have a seat. Did you bring an interpreter with you today?

15 OTHER: I, I speak.

16 JUDGE: Okay. Anyone here from Barrington Ridge
17 Homeowners Association?

18 MR. PETERSON: Good afternoon Your Honor. Scott
19 Peterson, [INAUDIBLE].

20 JUDGE: Okay. Mortgage Electronic Registrations
21 Systems, Inc. Unknown tenants. Any other parties claiming
22 thereon. Okay. I think, um, and for the Plaintiff we
23 have?

24 MR. DIAZ: Attorney Roy Diaz repre, uh, from Smith,
25 Hiatt & Diaz for the Plaintiff.

1 MR. COX: Your Honor, Ryan Cox for the Plaintiff.

2 JUDGE: Okay.

3 MR. MCMILLAN: Gavin McMillan.

4 MS. SHAW: Your Honor, Gabby Shaw on behalf of the
5 Plaintiff.

6 MS. TEDESKO: Patrice Tedesko for the Plaintiff.

7 JUDGE: And I excused Mr. Smith, correct?

8 MR. DIAZ: Correct. Your Honor entered an Order on,
9 uh, August 23rd, 2010 excusing, uh, Michael Wilde, Dan,
10 Daniel Stein and Robert Smith.

11 JUDGE: Okay. So I believe that I have everyone here
12 present.

13 MR. DIAZ: Yes Your Honor.

14 JUDGE: All right. The purpose of today's hearing is
15 to respond to the Order to Show Cause why Plaintiff and
16 Plaintiff's Attorney should not be held in contempt and for
17 sanctions. Mr. Diaz, are you representing the Firm as well
18 as each of the individual attorneys?

19 MR. DIAZ: As, as well as the Plaintiff, yes.

20 JUDGE: And the Plaintiff?

21 MR. DIAZ: Yes.

22 JUDGE: And, um, is there, there was an issue, I
23 believe that you raised regarding service of process. Are
24 there any issues left remaining or do you, do each of you

1 acknowledge that the Court has jurisdiction over each of
2 you pursuant to the Order to Show Cause?

3 MR. DIAZ: Yes, we do acknowledge that the parties
4 that are here are here under the Court's jurisdiction, yes.

5 JUDGE: Okay. So, um, any waiver as to any defect in
6 service of process is considered to be complete at this
7 time, is that correct?

8 MR. DIAZ: Correct, the only service issue was as to
9 one of the attorney's, Daniel Stein, who has been excused.
10 Everyone else is here properly served.

11 JUDGE: Okay. Thank you. Now, um, is there any, uh,
12 should the Court be, um, proceeding on a con, indirect
13 criminal contempt. Is there anyone who wishes to be
14 formally arraigned?

15 MR. DIAZ: Your Honor, um, in reviewing the order,
16 there was a question as to that the order generally alleges
17 that there were violations of local rule. And in reviewing
18 the order, we were not able to ascertain whether or not the
19 Court is proceeding with indirect criminal contempt, or
20 whether or not the Court is proceeding with civil contempt.
21 So we were unable to determine that from the face of the
22 order. So, we're not in a position at this point, based on
23 what we've reviewed to take a position regarding whether or
24 not any of the parties should be arraigned, or whether or

1 not the Court's proceeding under indirect criminal
2 contempt.

3 JUDGE: Okay. Um, I believe that under 3.840 uh, the
4 Rules do permit having reviewed the Order to Show Cause, I
5 do believe that the, that that rule can apply specifically
6 as it relates to Ryan Cox. Uh, and as it may relate to,
7 uh, Gavin McMillan, because those attorney's, I believe had
8 specific knowledge or were present. I know Mr. Cox, I had
9 a conversation with specifically on this issue. Um, I
10 believe that the Court has complied with the rule 3.840 as
11 it relates to indirect criminal contempt. Um, and, also,
12 as it relates to civil, indirect civil contempt. So, if
13 you feel, let me ask you Mr. Diaz, what, what do you think
14 that this costs your firm to be here today?

15 MR. DIAZ: I'm sorry?

16 JUDGE: What do you believe that this costs your law
17 firm, for you and each of these attorneys to be here today?

18 MR. DIAZ: The cost to the firm, um, is probably in
19 the neighborhood of seven thousand dollars.

20 JUDGE: Okay. So, um, are you, do you wish to proceed
21 with the hearing today, or do you wish for the court to
22 amend its Order to Show Cause and identify each individual
23 attorney who should be, uh, considered to be in indirect
24 criminal contempt and those of you, including your law firm

1 that should be held in either direct or indirect civil
2 contempt?

3 MR. DIAZ: Because of the nature of the Order, Your
4 Honor, I don't think I have a choice but to say that I
5 would want some specificity so that we can properly defend.
6 Having said that, under the circumstances, I would prefer
7 to resolve the issue today, if it can be resolved. I would
8 prefer to have an opportunity to explain to the Court, um,
9 the processes and the, the, the number one, the processes
10 and the issues that led to what the Court has viewed as
11 violation of local rule, and to explain to the Court
12 changes in those processes and the steps that the firm and,
13 the firm has taken, the attorney's have been trained to
14 follow that would, in my opinion preclude this kind of
15 activity in the future, and have the Court determine
16 whether or not any contempt proceedings or any contempt
17 should be, would be appropriate, but, I run the risk, the
18 labor risk here. I understand that, and, and the nature of
19 indirect criminal contempt or civil contempt, we take that
20 very, very seriously. So, um, to the extent the Court
21 would entertain maybe a Proffer of what we would reply to
22 as it relates to what we've seen in the Order that's been
23 issued, where I don't have to waive the opportunity to come
24 back should the court decide it's insufficient and that

1 there is going to be further proceeding for indirect
2 criminal contempt, I would ask the Court to entertain that.

3 JUDGE: Okay. So you, it, let me make sure that I'm
4 clear. You and each attorney with you, would like to
5 proceed under any civil contempt proceeding today, and
6 should the court then find after today's, uh, proceeding
7 that further indirect criminal contempt, um, proceeding
8 should be filed, then the Court will then renotece
9 specifically identifying the criminal contempt?

10 MR. DIAZ: Correct.

11 JUDGE: Mr. Cox, is that acceptable to you?

12 MR. COX: Yes your Honor.

13 JUDGE: Um, Ms. Tedesko, is that acceptable to you?

14 MS. TEDESKO: Yes Your Honor.

15 JUDGE: Um, Mr. Wa, uh, McMillan?

16 MR. MCMILLAN: Yes Your Honor.

17 JUDGE: Uh, then Ms. Strauss?

18 MS. STRAUSS: Yes Your Honor.

19 JUDGE: Do I have everybody?

20 MR. DIAZ: Yes, you do.

21 JUDGE: Okay. And Mr. Diaz, that is your intention.
22 All right. Then, um, you may proceed.

23 MR. DIAZ: Well, I think that the first inquiry that,
24 that I would, I would want to make would be the reference
25 to violation of the local rules.

1 JUDGE: Yes.

2 MR. DIAZ: If, if we could get some clarity on that,
3 um, that would help.

4 JUDGE: Okay.

5 MR. DIAZ: Direct us in the, in the direction to
6 presenting testimony or presenting information regarding
7 that.

8 JUDGE: All right. Administrative Order establishing
9 standard procedures for residential and commercial mortgage
10 foreclosure action 2., uh, excuse me, 2008.141, um, which
11 copy of which I have, I don't know if you have that with
12 you. But it is on, available online.

13 MR. DIAZ: We, I have seen it, I am familiar with it.

14 JUDGE: Okay. Um, specifically, that involved
15 proceedings, uh, which were in effect, uh, on or after
16 December 1 of 2008. Now, I think the record should clearly
17 reflect that this foreclosure was filed in November of
18 2007. The, um, Court also finds that there were, there
19 were, um, court appearances, uh, from 2008, um, one May 29,
20 2008, on July 31, 2008, one December 9, 2008, uh, which
21 would have been in effect after the, that Order. There is
22 also, um, administrative Order 2010-12.1, which came into
23 effect May 20, 2010, which, uh, came into effect after my
24 telephone conversation with Mr. Cox, uh, but before the
25 last hearing on June 28, 2010, which precipitated this

1 Motion. I have those. I also have a current copy, I'm not
2 sure that I actually have a copy of the, of my particular
3 Rules, uh, which were in effect at the time of the
4 beginning of this case, but I do have the ones that are
5 current today. I also, um, implore you to be reminded of
6 the, uh, Code of, uh, Professional Conduct and the, uh,
7 Oath as Attorney's that you took when you came into the
8 bar.

9 MR. DIAZ: Understood. Um, just to clarify one issue,
10 or one point, the Administrative Order 2010-12.1, I, I
11 believe the Court said it was effective May 20th, but I
12 think the, just for clarity of the record Your Honor, the
13 effective date was actually June 21, 2010.

14 JUDGE: Okay.

15 MR. DIAZ: And the only reason I bring it up is to
16 have a clear record.

17 JUDGE: Okay. Thank you.

18 MR. DIAZ: Um, and, um, so, if, if, if I'm to
19 understand this correctly, I think what we're dealing with
20 is the fact that there were, um, repeated, um,
21 cancellations throughout the case of hearings, and the, um,
22 Court noticed or stated earlier, I believe that the issue
23 revolves around that, that opposing parties and opposing
24 counsel. We're not contacted prior to cancellation of the
25 hearing.

1 JUDGE: Um, yes. And that, um, under the circumstances
2 of the current environment, uh, the Court's, um,
3 significant budget restraints, uh, the fact that every time
4 you take up hearing time and fail to appear, some other
5 litigant is precluded, uh, from having that appearance
6 before the Court. So, it is, um, disrespectful and, uh,
7 inconsiderate, uh, of the Court's time, and impeded
8 judicial administration.

9 MR. DIAZ: Understood.

10 JUDGE: Okay?

11 MR. DIAZ: Well, if I may, Your Honor, the, the first
12 point that I would like to bring up on behalf of my firm,
13 on behalf of the Plaintiff, and on behalf of the attorney's
14 that are present today. Um, is the fact that the issues
15 that we're dealing with in this case and the issues that
16 are before you, at this point, um, were not the result of
17 any willfulness, or any maliciousness. I, I feel like I
18 have to state that. Um, we are all dealing with a crisis.
19 And the Rules and the playing field is constantly in
20 motion. Uh, on behalf of my firm, uh, we have, an
21 extremely difficult task, which is keeping track and
22 keeping on top of all of the changes, particularly in the
23 last 24 months that have been handed down from the Supreme
24 Court down, every circuit, the Supreme Court, every
25 circuit, every local Court and every division. Um, we have

1 diligently worked and continued to diligently work to
2 manage that. It's a very, very difficult task, but it's
3 one that we have to deal with. Um, we've implemented
4 procedures. We've obtained technology. Um, we've trained
5 and are constantly. There's a constant stream of training
6 that goes in our office to try to keep the files moving,
7 which the Courts and our clients require. And, to follow
8 the rules, those rules incorporate the canons of ethics,
9 and to stay on top of those procedures. It's a crisis.
10 It's, it's not easy as much as we try, there are going to
11 be times, there have been times where things have slipped,
12 there's certainly today, we're facing a situation where
13 things were not handled the way they could have been. And,
14 I'm not gonna stand here and tell you there's never gonna
15 be a problem in the future, because I can't wholeheartedly
16 say that. What I can tell you is, when these issues arise
17 and when they, it comes to our attention that it's a
18 tremendous problem. We do face them. And we do deal with
19 them. In this particular case, in your division, we've
20 made some extreme changes going forward, where we virtually
21 will not be setting any hearings in your division unless
22 and until we have determined that everything that's
23 required to set the hearing is physically in our hands. We
24 have assigned an attorney to look at every case that's
25 coming up in your division, actually, in, in this circuit,

1 every case that's coming up in this Circuit 20 days prior
2 to the case with a list, a check list to determine whether
3 the case is actually, that's, that's been noticed, okay,
4 whether that case is ready to proceed, and if not, the
5 Notices of a Cancellation, the phone calls, the process is
6 in place to properly cancel those hearings. They will not
7 be reset until we know that we've gotten the information
8 and we've gotten all of our documents or we've got
9 everything we need, whether it's going to be noticing it
10 for trial, because we're gonna have an evidentiary hearing.
11 Whatever it is we need, we will not be resetting those.
12 Um, historically looking back, we're all pushed with the,
13 with the, the will to move these cases along. And our
14 systems and our processes are designed to keep the cases
15 moving. And, unfortunately, the end result of that, and,
16 and is that there are times when we find ourselves in a
17 position where the current is moving along and we're at the
18 eleventh hour and we realize we can't proceed. Now, what
19 we do, and what we try to do is whenever we find a
20 situation like that, we try to fix it. And in this
21 district and in your division in particular, we believe
22 that now, we've been able to do that. Um, the, the issue
23 of noticing parties, you know, we, we operate under, under
24 the guidelines and under, under the practice, and, and we
25 don't, we try very hard not to, not to have any overkill in

1 the process, and the reason is because, we have to do this
2 sufficiently. The fee structures, Your, Your Honor knows,
3 is, is, is a relatively low one. The process is too big
4 and there's too many cases not to move as efficiently as
5 possible. What we have found in the past is, if we have a
6 situation such as this case, where we have a borrower
7 that's been sued, the borrower has defaulted, um, it's very
8 rare that those borrowers even appear at hearings as we go
9 down the road. Um, and, under the Rules, once a party has
10 been defaulted, the Notice requirements are a little
11 different. But we do provide Notice to defaulted
12 borrowers. We always provide Notice to all def, defaulted
13 parties. What we find in cases where there's an
14 association involved is the association rarely resists the
15 Summary Judgment and to the contrary, they want us to get a
16 Summary Judgment, they want the cases to move. So, as we
17 have been operating in this environment, and as we've been
18 trying to be as efficient and effective as possible, we
19 haven't found that the defaulted borrowers in cases that
20 we're involved in, or the Associations were offended or in
21 any way even requesting that we notify them what, if we
22 were gonna cancel the hearing, because in those cases, it's
23 rare that they even attend. Now, we live and learn. And
24 we realize, particularly in this case, and particularly
25 under these facts, where an association actually came in

1 and affirmatively moved to move the case along that we have
2 to change that process when we have a circumstance like
3 that. Which we have now implemented and we have now
4 changed. Um, the movement of the file. Um, the rules that
5 we follow in our office internally. The training that our
6 attorney's go through to understand the changes and
7 understand what the rules are, and understand what the
8 procedures are. That's an ongoing process, and like the
9 court system that's completely overwhelmed, everybody,
10 everybody that's involved in foreclosures, is overwhelmed.
11 The defense attorney's are overwhelmed. We see tremendous
12 mistakes that come in in pleadings, from defense attorneys
13 who filed Request for Production or a file a Discovery,
14 that name other parties or reference other addresses.
15 It's, it's, it's, it's the world we're in right now, and
16 what I want the Court to understand is we, at my firm, our
17 attorney's, we work diligently. We do work diligently on
18 catching these things as they occur. On catching new, new
19 mistakes that arise, which is a daily event we find new
20 issues. We find new requirements and we work diligently.
21 We have committees that we, and we're not a big firm. I
22 just want to be clear about that. Um, we have, I believe
23 18 lawyers. We are not a very, very large firm.

24 JUDGE: You, you have a total of 18 lawyers in your
25 law firm?

1 MR. DIAZ: I believe it's 18.

2 JUDGE: And you can't figure out how when somebody sets
3 a hearing on a calendar to get it on the lawyers calendar?

4 MR. DIAZ: It does get on the lawyers calendar. The
5 issue isn't whether or not

6 JUDGE: I don't think Mr. Cox would agree with that
7 statement.

8 MR. DIAZ: Well let, let me tell you, let me tell you
9 what happened there. It wasn't that the, it wasn't that
10 the hearing wasn't on the calendar. What happens in, in
11 the process of the file is, that the, the hearing does get
12 on the calendar. The hearing gets on the calendar as soon
13 as it's set.

14 JUDGE: But Mr. Cox told me the hearing was not on his
15 calendar.

16 MR. DIAZ: And, and, and the reason is because, once
17 the hearing, it's electronic. Once the hearing is
18 cancelled it comes off. So, what he would have been
19 looking at when you called him on the phone, is a calendar
20 that did not have the hearing on it. Okay? That shouldn't
21 have happened. What should have happened, and what will
22 happen going forward, is it'll stay on the calendar with a
23 notation of what occurred. That's the change. That's one
24 of the changes we've implemented. But the way we had it
25 before, was if the hearing was cancelled, in our computer

1 system, it got deemed cancelled and it came off the
2 calendar. And it's a master calendar with the attorney's
3 names on it. So there's a lot of cases on it. So that's
4 one of the issues that we never really faced before, but
5 having now faced it and having now seen it, we realize this
6 is, something has to change. But that issue, if everything
7 else that we've implemented, works, that issue is never
8 gonna arise, because those hearings will have been
9 cancelled way in advance of the actual scheduled hearing,
10 and that issue will not, should not arise. If it does,
11 whoever looks at that calendar will be able to see what
12 occurred right on the note of the hearing itself.

13 JUDGE: So, when are, when are you telling me that you
14 put all of these new procedures in place?

15 MR. DIAZ: We evaluated your Order that we received
16 on, uh, July 22nd. And we had a meeting and we went through
17 the Order. We've looked at all the processes for this
18 circuit and for this county. We looked at, assuming what,
19 interpreting the Order, we looked at what the issues were
20 that were coming out of this Order. And, we implemented in
21 the last two weeks, we implemented these changes. Maybe
22 three weeks. We've implemented these changes, and like I
23 said we've done it in two stages. We've done a new
24 procedure for how we're gonna handle hearings that are
25 upcoming, and a procedure for how to deal with hearings

1 that are already filed and pending. And like I said, those
2 hearings, we're going to be looking at those 20 days in
3 advance of the hearing, so we have time to evaluate the
4 file, and to verify that we are really ready to proceed.

5 JUDGE: Okay.

6 MR. DIAZ: The goal, Your Honor, is that we not, that
7 if we cancel a hearing, we cancel it once, and the next
8 time it's set, it won't be cancelled absent, this is a
9 whole other category, absent, we being contacted by our
10 client because the borrower goes into a loss mitigation
11 program. The client is required under HAMP because of
12 guidelines that they have to adhere to to cancel the
13 hearing and, and, and to comply with those HAMP
14 requirements. Um, if there is a pending, um, if there is a
15 pending bankruptcy that gets filed, we'll have to cancel
16 for that. So, and those limited circumstances, we will
17 have to deal with the potential of a cancellation of a
18 hearing on short notice. In that effect, one of the other
19 things we implemented in change is this. We have for, at
20 least the attorney's in the case, in these cases, we do
21 have the ability through JACS to have web information,
22 email information. We've now implemented that email
23 information so that in the event we do have to make a
24 cancellation, we can have email communication going to the
25 attorneys that are of record, that are registered with the

1 case. And they'll get additional protection that way. So,
2 you know, I, I, I can't stand here and tell you that
3 nothing went wrong in this case. But what I can tell you
4 is, it was not willful. Um, we don't have disregard for
5 the Court. We don't have disregard for other attorneys
6 that are involved in the case. We definitely do not have
7 disregard for borrowers either represented or not
8 represented, but, we're in an environment that is very
9 challenging. We put a tremendous amount of effort. We
10 don't take it lightly. And we're constantly moving in the
11 right direction and I could tell you that based on this
12 Order to Show Cause, and the issues arising from this Order
13 to Show Cause, I don't believe, and I can sincerely
14 represent that these issues are going to continue. I can't
15 tell you we will never have a problem again. I can tell
16 you that these issues, we've taken due diligence and due
17 effort to cure these issues so that they don't have it
18 again in the future, and I think that the, the safety net
19 we've thrown out there is, is pretty thorough.

20 JUDGE: Well, it's not very thorough Mr. Diaz because
21 the same thing happened today, this morning at, uh, there
22 was a hearing scheduled at 11:00 on Judge Galen's calendar.
23 It is assigned to Mr. Cox, and no one appeared and no one
24 cancelled the hearing. That was scheduled, according to
25 JACS, uh, July 16 of 2010 at 12:03 p.m. That would be 10

1 there was noncompliance. So that was hearing number one.
2 Uh, and we are now talking about this case, 2007-7993.

3 MR. DIAZ: Do you have the defendant's name?

4 JUDGE: I do have the, oh, you're talking about the one
5 that happened today?

6 MR. DIAZ: Yes. So that I can look at that file.

7 JUDGE: Yes. The one that happened today is HSBC Bank
8 versus Chenault. C-H-E-N-A-U-L-T. There is also a, um,
9 Homeowners Association at the Inlets. Uh, the Notice of
10 Hearing was e-filed, uh, July 26th, 2010, that would be 20
11 days after I issued by Order and, um, no one appeared
12 today.

13 MR. DIAZ: And I will tell the Court that under our
14 new procedure that should have be caught. I would have to
15 look at the file and find out what happened and why that
16 wasn't caught. Because, what we've

17 JUDGE: Okay.

18 MR. DIAZ: What we've done, and I sat down with the
19 attorney who's responsible for it, Tonya Simpson, and, uh,
20 I've reviewed with her, last week, what she had in front of
21 her as far as hearings going back and she showed me a
22 report that had all of the hearings that are coming up and
23 her checklist, and the hearings that she was cancelling,
24 and the hearings that were ready to go forward. What, why
25 that did not get picked up on her report, I can't tell you

1 standing here right now, cause I would have to look at the
2 file. And, you know, and, and, in furtherance, and as a
3 mitigating circumstance, Your Honor, I, I would, I would, I
4 would bring something up to the Court, cause it was in
5 front of Judge Logan. We had, we previously had an issue
6 with his division where there was a, a problem that we
7 were, we were not complying with a rule that he had, that
8 he had implemented.

9 JUDGE: In, in this case, that is correct. In the, in
10 the case in which you are appearing before me today, that
11 is correct. Because on May 29th, of 2008, the, there was
12 non compliance, and on that date, with Ms. Humphrey
13 appearing telephonically, which is currently against the
14 rules, um, the hearing was cancelled by the Judge.

15 MR. DIAZ: Okay.

16 JUDGE: Then again, July 31 of 2008, again, Ms.
17 Tedesko was the, um, attorney, uh, supposedly representing
18 and on July 31, 2008, no one appeared and, uh, the no
19 packet was there and Judge Logan cancelled it. That was
20 hearing number two. Hearing number three, December 9 of
21 2008, uh, again, Patrice Tedesko is listed as the
22 Plaintiff's Attorney, but it was cancelled on that date
23 because there was no packet or other information provided
24 to the Court. So that's three times that the hearing was
25 set. On the fourth time, December 17, nothing happened

1 then after that until all right. Let's, uh, let me go back
2 to this case. So December 9 of 2008, the Court Appearance
3 Record shows that that was cancelled. Uh, then it looks
4 like there was another hearing set for November 16 of 2009,
5 but that was, uh, excuse me, another hearing set for
6 December 17, but that was cancelled.

7 MR. DIAZ: Correct. If, if I can just advise the
8 Court. Um, one of, one of the issues that came up in t his
9 case, um, is, the, uh, the originating, under, uh, lender
10 in this case was Countrywide Home Loans. They entered into
11 a Agreement with the Attorney General back in 2008
12 regarding how they were proceeding with loans that were in
13 default. They had entered back in December of, uh, 2008,
14 they entered a hold on all files that came under that
15 stipulated order that they entered into with the Attorney
16 General's Office. And so, what had happened was, we
17 basically were notified of thousands of files that
18 qualified under that adminis, that Order. And we were told
19 to put those files on hold and not to proceed with those.
20 That went on between October of 2008 and August 26th, 2009.
21 And the reason I'm telling you this isn't to excuse the
22 fact that we may or may have, or should or should not have
23 made some contact, that's the kind of thing that we're
24 dealing with and when something that massive occurs, there
25 are times where it, it's not, it, we, we can't properly

1 notify everybody within the timeframes. And it's just one
2 of the things we've been working on, typing up and fixing.
3 Because we understand that that's not acceptable. But it
4 is, it is the environment we're in. Um, why this 2007 case
5 that you're referring to was not caught? I can only tell
6 the Court that I have to inquire and find out. It should
7 have been. Basically the timelines that you're telling me,
8 it should have been caught. I don't know why it didn't get
9 caught.

10 JUDGE: Okay. You're saying you couldn't notify
11 somebody in time, but, when the defendant's came in, they
12 were notified of the hearing. They were never notified. I
13 asked them if they were notified of the cancellation. They,
14 they appeared.

15 MR. DIAZ: That's true.

16 JUDGE: The appeared because it was still on my
17 calendar, and I appeared because it was still on my
18 calendar. So, notifying within the time limit, is, is not
19 the same as not notifying anybody at all.

20 MR. DIAZ: I understand that.

21 JUDGE: And it appears to me based on what I'm seeing
22 in this record, that that is what happened in this case.
23 Is no one was notified. So, and when the defendant
24 appeared to begin with, and when the Homeowners Association
25 came in and did a Motion to Compel, I don't see how this

1 case factually, um, fits into any of the excuses that you
2 have presented. Because, in this particular case, these
3 were all the exceptions. You were on notice. You were on
4 notice that the cancella, of the first, back in two, in the
5 early, uh, two thousand, uh, the first hearing in 2008 that
6 the packet, that there was noncompliance and the, and the
7 hearing was cancelled. So we have to go through four more
8 times of that, then the homeowners association does file
9 the Motion to Compel. Um, Mr. McMillan was Noticed on
10 that. He was Ordered by me to set this proce, to proceed
11 with this foreclosure within 90 days. Well, what is your
12 response to that?

13 MR. DIAZ: We filed a Notice of Hearing in an attempt
14 to proceed with it on a timely basis.

15 JUDGE: Okay.

16 MR. DIAZ: Prior to the hearing, we did not receive
17 the original Promissory Note and our client as to the issue
18 of, of potential loss note, our client advised us that they
19 were making the inquiry and trying to obtain information so
20 that we could obtain the evidence we would need to, to
21 reestablish the note by way of a loss, by way of either a
22 loss note affidavit or testimony.

23 JUDGE: Okay. So wait. You're telling me that
24 in May of 2010, when the Homeowners Association came in and
25 said this thing has been going on too long, my client is

1 being injured, the defendants come in, they want to know
2 what's going on, no one from your office appears. Um, Mr.
3 Hay appeared on behalf of the Plaintiff on that day, and on
4 that date, I said set it within 90 days. That, this would
5 be the fifth hearing coming up, the fifth hearing on a
6 Summary Judgment. Are you telling me that only in 2010, you
7 realized you don't have the documents? Because if so, then
8 perhaps you can go back and explain to me why you're Motion
9 for Summary Judgment was scheduled on the Court's calendar
10 four previous times. Without having the document, and
11 clearly after the first time you would know that you'd have
12 to have that document before you came back before the
13 Court?

14 MR. DIAZ: The information

15 JUDGE: So I'm getting the, I'm feeling a little bit
16 run around right now.

17 MR. DIAZ: No you're not. Let me explain. The
18 information that we obtained from our client regarding
19 proceeding with the hearing and regarding the original
20 document, we make it, or do you have the original note.
21 They respond yes or no. Then, the issue becomes locating
22 it. Getting the original document and getting it over to
23 us. We are told by our client that they do have, that
24 their custodian is in possession of it, but they are having
25 a problem locating the physical document.

1 JUDGE: Then why was the hearing scheduled?

2 MR. DIAZ: Because we were anticipating that we were
3 going to be able to receive that document prior to the
4 hearing date. And that's one of the issues that I've told
5 you we are not going to do any longer. We are not going to
6 schedule hearings unless and until we either have the
7 original documents in our physical possession, or we have a
8 Loss Affidavit or whatever other evidence we need to
9 reestablish the Note in our possession. That is an issue.
10 That is a pointed issue that we are going to correct.

11 JUDGE: Going to, but clearly as of this morning at
12 eleven o'clock, incapable of having done.

13 MR. DIAZ: I don't know. I don't know why this
14 morning's hearing, I don't know what happened with this
15 morning's hearings. We, we might very well have those
16 documents. We might have been advised by the Plaintiff he
17 had to cancel it for him. Or we had to cancel the hearing
18 for another reason.

19 JUDGE: By why

20 MR. DIAZ: That would be in the file.

21 JUDGE: isn't the Court notified? Let's assume for
22 the sake of the argument in all of these other cases, um,
23 and, and, agreed, currently at this moment with your
24 voluntary dismissal, the Defendant may not have too much to
25 complain about in this particular case, but the Court still

1 does. You are still taking time on the calendar where I
2 come in here and I sit and I wait. And that's what I did
3 on the next to the last hearing. In fact, I walked up to
4 my office, after my conversation with Mr. Cox, and I
5 prepared this Order to Show Cause. But I was willing to
6 accept Mr. Cox's confusion because the next thing I saw on
7 the docket was that you had scheduled yet again, the Motion
8 for Summary Judgment. So, I, made a notation with all of
9 the cases that I have on my docket sir, I made a notation
10 to check that and when I realized that yet again, no one
11 from your office appeared on the, on that date, then I
12 filed, I had to add to the draft, but then I filed this
13 Show Cause. So, to this moment, sir, I have not yet heard
14 from you or any of your lawyers, or any of your staff
15 anything other than a platitude that, um, we're going to
16 take care of this. But it hasn't been taken care of. It
17 didn't get taken care of in this case, and it didn't get
18 taken care of this morning on Judge Galen's calendar.
19 Those are the only one's I know about. Um, I'm not going
20 in. I don't have the time to go in, but if you have 18
21 lawyers, I do not understand, sir, why when someone picks
22 up a phone and secures time on a court's calendar, that
23 somebody doesn't appear.

24 MR. DIAZ: And, that is a problem, and I acknowledge
25 it, and it is an issue that we are going to resolve. And

1 I, I, I know that, I can't, I can't go back and, and point
2 to you on those two cases why nothing went wrong. I could
3 go back and point to other cases where everything went
4 right and, and, and that's, that's the problem. The only
5 thing I can do is when I see these issues arise, such as
6 this, and I do respect the Court's time, and we do. Um, I
7 would have to them come up with a process so that that,
8 those kinds of things don't happen. Um, we don't have, we
9 don't live in a world where our lawyers in our office
10 handle these files like traditional law firms. Where you
11 have a lawyer that has their own files and they're managing
12 their files with a secretary. We don't, we don't operate
13 that way. We can't.

14 JUDGE: Why?

15 MR. DIAZ: Because of the volume. Because of the
16 costs.

17 JUDGE: Okay.

18 MR. DIAZ: It would, it would, we would literally be
19 four times the fees that we are awarded in, in the, in the
20 Courts in the State of Florida if we were gonna do that,
21 and we would need to increase our staff by five hundred
22 percent. So, it's not impossible to have a volume practice
23 and have it be effective, and have it work. We just have
24 to fix things that we find, as we find them, and we have to
25 anticipate the problems and, try to fix the problems before

1 they come up. There's no question that in this particular
2 case, on the date of the hearing, we should have been in
3 attendance and we should have explained to the Court why we
4 weren't prepared to move forward with our Summary Judgment.
5 We should have made the decision and instructed our client
6 as opposed to consulting our client, that under the
7 circumstances of this case, we had to dismiss the case. We
8 should have done that. And I, and I would hope that in the
9 future, if something like this happens again, that would be
10 the case, but we are, with this one exception, I have to
11 look and see what happened in this 2007 case that you're
12 referencing, we are, and we have implemented processes to
13 fix this, to try to capture this, so that it doesn't
14 continue to happen.

15 JUDGE: So, I think what you're telling me then is you
16 pay lip service to be, but yet, I have not seen one single
17 actual corrected policy, procedure. You're telling me that
18 this, that you're volume practice, um, is going to remain,
19 um, because you can't afford it. Well, how, how much do
20 you make in a day? How much do you make in a day?

21 MR. DIAZ: First of all Your Honor, I am not providing
22 lip service. This is not lip service. I am an officer of
23 the Court, and I'm explaining to the Court why the
24 circumstances that brought us here today occurred, and what
25 we're doing to try to resolve those circumstances so that

1 they don't continue to happen. I'm telling the Court that
2 we don't have contempt for your time. We do respect the
3 Court. We do respect the Court's time. So, this isn't lip
4 service. And I want to be clear about that.

5 JUDGE: Okay.

6 MR. DIAZ: Um,

7 JUDGE: But then tell me something concrete sir.

8 MR. DIAZ: When you say, how much

9 JUDGE: How much do you make in a day that makes it so
10 impossible that you can't get your calendar and your
11 lawyers to the Court at the right time. You only have 18
12 lawyers.

13 MR. DIAZ: It's, it's not a monetary issue. It's not
14 whether or not we can afford to do this properly. It,
15 it's, and that is not what, what I meant. When I, when I
16 reference the fees Your Honor, is, we, we complete a, a, a,
17 if you look at it in the traditional sense, if you step out
18 of the foreclosure box, and we look at it in the
19 traditional sense, and you look at a, a, a, legal
20 proceeding that is handled from start to finish for even
21 with contested issues for a couple thousand dollars, which
22 is what we're dealing with, um, I, I, I would point out
23 association lawyers that, that come in on the same cases
24 that they're involved with, and for the same amount of
25 time, and the same amount of, of, or the same type of work,

1 they're paid triple that, the courts award triple that
2 amount of money. And I'm not suggesting that the Court's
3 should do that. We can, under the fee structure, we can
4 operate and we can do things correctly. What I'm saying
5 is, because of the volume and, and the changes and the
6 constant movement that we have in the State of Florida,
7 it's a difficult task to stay on top of it. It can be
8 done, but it's never, it's not perfect. And we try very
9 hard to get, as close to perfect as we can, and proof
10 today, that we're not perfect is this 2007 case. So, I
11 said here earlier in my, in, in my presentation, I can't
12 sit here today in good faith and tell you there's never
13 gonna be another mistake. I can't do that. So, what we do
14 is we look at it, we look at each issue that comes up. We
15 evaluate it. And we tweak the system. Because that's the
16 world that we live in. And that's the way we can operate a
17 volume practice effectively, efficiently and cost
18 effectively.

19 JUDGE: But it isn't the Court's concern to make
20 certain that you operate a volume practice. It's the
21 Court's concern that you operate and represent each client
22 in each case according to the Rules, uh, of the Bar, and
23 according to ethics.

24 MR. DIAZ: Absolutely.

1 JUDGE: If you can't do that, then it is not my fault,
2 nor anyone else's if you have to either cut back your
3 cases. You're, you're not asking for fees from the Court.
4 You're arranging those fees through an Agreement with your
5 client.

6 MR. DIAZ: Absolutely.

7 JUDGE: If you can't handle it sir, get some other
8 lawyers, or throw it to the local lawyers. There's no
9 reason why in Manatee County, if it's too expensive for you
10 to be here, or too expensive for you to follow the rules of
11 the Court, or look them up on the website, where, where you
12 can see them in Fort Lauderdale, and not be able to comply.
13 It makes no sense to me, sir, nor is it an excuse that your
14 practice is volume and you want to make money.

15 MR. DIAZ: I am not saying that. I am absolutely,
16 unequivocally not saying that. What I'm telling you and it
17 hasn't, it doesn't have to do with the money. It has to do
18 with managing a case load and managing the changes and
19 managing the, the fact that every law firm that's involved
20 in fore, foreclosure litigation is in crisis mode. That's
21 a fact of life. So, what we do is we do the best we can to
22 stay ahead of the curve and that's what we're, what we've
23 now done in this county, and in this district and in this
24 circuit, is we've now changed a method in which we handle
25 these cases. It's not a factor of money. It's a factor of

1 process. And we've changed the method in which we handle
2 the cases in county and this circuit so that we're not
3 filing loss, uh, pleadings and asking for court time until
4 we know, unequivocally from our end, for everything that we
5 have control over, as a law firm that we are ready to
6 proceed. Okay? And that has been implemented. Is it
7 perfect? Obviously not.

8 JUDGE: Obviously not.

9 MR. DIAZ: And one of them got away. And I got to
10 find out why and I gotta find out what happened. But what
11 I'm representing to the Court is that we are taking this
12 very seriously, and we are dealing with the fact that we
13 recognize the issue that the Court's dealing with, with
14 having time taken from its docket. Having time taken from
15 its day. Having other parties, uh, notify, uh, notified of
16 hearings that are not being properly cancelled. We are
17 definitely changing that and it's not lip service. It's a
18 fact. Um, I don't have anything specific to show you. I
19 don't know how many cases Your Honor, you found this one
20 2007 case. I can't sit here and tell you how many cases
21 we've caught and cancelled because I didn't, I didn't put
22 that information together.

23 JUDGE: How difficult is it sir, to not take the
24 Court's time until the case is ready? In other words,
25 don't call ahead anticipating and hedging your bets, taking

1 time on the Court's calendar, unless, in fact, at that
2 moment, that it is set. You know you are ready to proceed.
3 How difficult is that?

4 MR. DIAZ: It, it's, it's not an issue of difficult.
5 And again, we're, we're, we're looking back at the past
6 with the benefit of hindsight. But here's the situation we
7 were dealing with, and we still deal with. Okay. There
8 are circuits that we can't get hearing, a hearing date for
9 six, seven, eight months. So, at,

10 JUDGE: Well, do you think that might have something
11 to do with the fact that time is taken, and then cancelled
12 and blocked. I mean I, I haven't done an analysis of the
13 amount of cases that your law firm secured on, uh, three or
14 four circuit judge's calendars here. But, if you are, if
15 you are telling me that your policy still includes setting
16 hearing time on the calendar anticipating that, oh if you
17 don't get it right, you'll cancel it, then that is still
18 not going to fix this problem.

19 MR. DIAZ: It's, it's not, and again, what I stated
20 was, we're looking back. And hearings that we've scheduled
21 in the past and processes that we've implemented in the
22 past, the reason we followed those procedures is because of
23 that hearing issue. Because of the timeline involved. So,
24 I am not saying to you that we would be securing times
25 willy nilly. What we found is cases move at a certain

1 pace. And when we know, in 99% of our cases, that we'll
2 have everything we need within a six month period, we're
3 confident when we secure that time that we're going to be
4 well prepared to secure that time and use it as we have in
5 thousands of cases every month.

6 JUDGE: And in this particular case, this De Freitas
7 case. You had the confidence that on May 29th of '08, after
8 having filed this in 2007, that you'd be ready, but you
9 weren't.

10 MR. DIAZ: No.

11 JUDGE: And on July 31 of 2008, when you scheduled the
12 hearing, not ever telling anybody that you were cancelling
13 it, just not showing up, you had good faith then, and that
14 after you did that, didn't bother showing up, you scheduled
15 it again for December, you didn't show up. You scheduled
16 it again, after that, then we have the Motion to Compel,
17 then after that, you set it for, um, in February, you set,
18 you set it, then cancelled it, and then on April 5th, you
19 set it again, not bothering to show up. Not bothering to
20 call. Client, uh, the defendant shows up. No one calls.
21 I call Mr. Cox, where are you, what are you doing? Don't
22 you understand the significance of your being here. This
23 is intolerable. What are you gonna do? I, I'm sure Mr.
24 Cox told you, he didn't have any idea. He had no excuse.
25 He apologized. I accepted it. But then, after, keeping in

1 mind that there is an Order of the Court that this case was
2 to be resolved in 90 days. The Homeowners Association said
3 we're, we've moving to get this done. We want you to get
4 this done. I gave you 90 days to do it, having already
5 been on the, at issue since 2008 and you're telling me that
6 yet the last hearing, same thing happens. Nobody shows up,
7 nobody calls, nobody cancels. The defendant shows up. He,
8 it costs him four hundred dollars in, um, lost wages. He
9 had to pay an interpreter to come in, because his wife
10 didn't come in to interpret for him. Had to pay him fifty
11 dollars, fifty dollars. I found, at that time, that you
12 were in contempt and that you needed to pay that.

13 MR. DIAZ: Well,

14 JUDGE: I didn't issue a written order on it because I
15 thought it would be nice if I saw you or had some true
16 explanation. But Mr. Diaz, all I'm hearing from you is
17 this is the way that we do business. We'd like to
18 accommodate you for sure, we're making some changes, and it
19 won't happen again, except that it did.

20 MR. DIAZ: Well, what I'm saying

21 JUDGE: That's what I'm hearing.

22 MR. DIAZ: All right. Let me, let me

23 JUDGE: So, I think sir, what you need to do is, if you
24 want to tell me about your policies and procedures, then I
25 think you need to have somebody testify to me as to what

1 they are, because based on your representations, I have no
2 confidence whatsoever that this problem has been corrected,
3 or that it has truly been addressed appropriately. You've
4 not explained to me how these lawyers, who are present
5 before me today, um, have been notified of the changes.
6 Um, I mean, did you get them to sign something that says I
7 swear I'm gonna read the Rules from now on? I mean you've
8 given me nothing sir. Nothing.

9 MR. DIAZ: Well,

10 JUDGE: Except an explanation of how you believe you
11 should be able to do business. But sir, how I do business
12 in this courtroom, is the way I learned it a long time ago.
13 If you are standing before me, you have my five minutes.
14 And no one else does. And when you take my five minutes,
15 that means somebody else doesn't have it. So, what is it
16 that you would like to do now.

17 MR. DIAZ: I'd like to clarify a couple of points. I,
18 I am not standing here telling you this is how I do
19 business and this is why it is what it is. I'm explaining
20 to the Court, so that the Court has perspective of the
21 background of why things have happened and the way we
22 operate, so the Court understands that, that, that why
23 these mistakes occurred. I'm not standing here telling you
24 that there's nothing wrong with this file, and that this
25 file was handled properly. I'm not taking that position.

1 I'm telling the Court that we have had a review of why this
2 occurred, and we have

3 JUDGE: Who's we?

4 MR. DIAZ: I, my partner, our manager, our foreclosure
5 manager, our contested, contested attorney manager and our
6 hearing coordinator.

7 JUDGE: But what about these attorney's who sign their
8 names to pleadings. Your firm has already been, uh, warned
9 in Hillsborough County for signing pleadings that were
10 considered sham. I think if you file a Notice of Hearing
11 and Mr. Cox's name shows up on it, or Mr. McGavin is
12 getting, uh, I'm sorry. I keep calling him Mr. McGavin.
13 Mr. McMillan is, um, getting copies of these documents,
14 then if you're filing this Notice of Hearing saying this
15 matter's gonna be heard, and you don't bother showing up,
16 or you don't record it or you don't let anybody else know
17 that's a sham. And your firm's already been chastised in
18 Hillsborough County for this.

19 MR. DIAZ: The issue in Hillsborough County was
20 resolved. That issue has not come up again. The issue in
21 Hillsborough County.

22 JUDGE: I, I'm not saying that in this case that your
23 pleading was a sham. I am not. I read that opinion, and I
24 specifically noted which of the lawyers, um, who are here
25 before me today were also named in that case.

1 MR. DIAZ: Correct.

2 JUDGE: And yes, that was an issue of, of content.

3 MR. DIAZ: Correct.

4 JUDGE: But to me, if you are signing a Notice of
5 Hearing and you have no good faith that you are actually
6 going to be ready, and you don't have, um, you're not
7 saying that you're going to cancel it, why are you even
8 securing that time until you are ready?

9 MR. DIAZ: Because based on our previous experience,
10 we were under the good faith belief we would be able to
11 move the file.

12 JUDGE: Okay.

13 MR. DIAZ: And in this, and in this particular case,
14 Your Honor, I had conceited to the court that that was in
15 error. We shouldn't have. And what we are doing on a go
16 forward basis, similar to what happened in Hillsborough.
17 We identified a problem, and we corrected it and we haven't
18 been, had, had that issue come up again. So, what I'm
19 telling you

20 JUDGE: But you're not telling me sir, that you are
21 not going to take the Court's time until you are ready.

22 MR. DIAZ: No, that's exactly what I'm telling you.

23 JUDGE: That's not what you told me, uh, half an hour
24 ago.

1 MR. DIAZ: Let me say it in another way. We are going
2 to not take the Court's time until we see that we have
3 everything, within our control, that we need to proceed
4 with a Summary Judgment Hearing or whatever hearing we
5 schedule. To the extent we are instructed by our client or
6 by a bankruptcy court or by other, some other third party
7 intervention that we cannot proceed, we then will follow
8 the appropriate procedures to cancel as timely as, as, as,
9 the circumstances allow when we get the notification. Now,
10 I'm gonna go one step further. If we are told by our
11 client on the eve of a hearing that we cannot proceed
12 because there was an issue with HAMP or there was an issue
13 with loss mitigation, we will appear and we will explain to
14 the Court the circumstances. But, but what I'm telling
15 you, Your Honor, similar to what happened in Hillsborough,
16 we've identified the problem and we've taken steps to cure
17 that problem. This is not lip service.

18 JUDGE: Okay.

19 MR. DIAZ: This is me making a representation to you.

20 JUDGE: I appreciate that. So, how have it, how have
21 you notified the 18 lawyers in your law firm that they have
22 to change their procedure?

23 MR. DIAZ: Through

24 JUDGE: Because Mr. Cox's name is on my list. And I
25 think he understands that.

1 MR. DIAZ: Correct. We, we meet with them in our
2 office. We show them the new procedures, and we go through
3 how the cases are being handled on a go forward basis. And
4 that's how we do it. And we do through a meeting.

5 JUDGE: Okay. So when did you have this meeting?

6 MR. DIAZ: Thursday.

7 JUDGE: A week ago Thursday is the first time that you
8 are, that, that would be August the, today's the 30th. A
9 week ago Thursday, the twenty, uh, 26th or the 19th, of
10 August?

11 MR. DIAZ: A week ago Thursday.

12 JUDGE: So, that meeting occurred after you set me the
13 letter, and after you filed the response?

14 MR. DIAZ: Correct.

15 JUDGE: So,

16 MR. DIAZ: So, we went through the process of
17 identifying the issues. We went through the process of
18 determining how, within our system, and within our, with
19 the technology that we have in our system, in our, in our
20 office, we would be able to capture this and handle it. We
21 went through and, and, and, and drafted proposed procedures
22 of how we were going to make the changes we were gonna
23 make. We met and reviewed, we signed off on it, we met
24 with the attorneys, we explained it. And we do that every

1 week for different things. It's a constant, it's a
2 constant cycle Your Honor.

3 JUDGE: So, how many times did the 2007 case that you
4 are here before me today come up in your meetings?

5 MR. DIAZ: Judge, no particular case came up. It's a
6 process that we

7 JUDGE: Did Mr. Ryan advise you that I had to call him
8 and ask him why he didn't appear and remind him in this
9 case, that he had sat four other hearings and failed to
10 appear?

11 MR. DIAZ: Yes. Yes he did.

12 JUDGE: And what did you do about it then?

13 MR. DIAZ: Well, I, he obviously got my attention that
14 this is a huge problem. To have a Court call and be
15 caught, and for one of my attorney's to be caught virtually
16 off guard because he wasn't aware that there was a hearing
17 that had not been cancelled. That is obviously a, uh, a
18 huge problem that we needed to resolve.

19 JUDGE: Okay. So, the response to that was what?

20 MR. DIAZ: We sat down, met, reviewed.

21 JUDGE: Why don't you let Mr. Cox tell me what
22 happened?

23 MR. DIAZ: Well he wasn't, he wasn't

24 JUDGE: Mr. Cox.

25 MR. DIAZ: He wasn't involved in, in correcting it.

1 JUDGE: Okay. So after I had my conversation with Mr.
2 Cox, and advising him that, um, the defendants were present
3 on a Motion hearing, it was denied and even though the
4 Motion, let's see, let's go back to that. That four five
5 hearing was a Motion for Summary Judgment, correct? The
6 April 5th hearing. And, okay. Go to the actual Motion, the
7 actual Notice of Hearing. This one right here. Yeah.
8 Okay. That, not that was the Association's Notice. Let's
9 go back up to, yes, the Motion for Summary Judgment was
10 then scheduled for June 28th, but what you failed to realize
11 is that I denied the Motion for Summary Judgment. You
12 didn't file a new Motion for Summary Judgment. You just
13 rescheduled it. You weren't paying a bit of attention to
14 anything that I said. I said, "Don't set these hearings
15 until you're ready. And, if you're not going to be here,
16 then, your Summary Judgment is denied and, you have to now
17 pay the defendant". I, I, uh, I'm, uh, not satisfied with
18 anything that you have said to me Mr. Diaz. Um, I have not
19 seen anything. Um, so, um, is there any of your other
20 attorneys who would like to testify or show cause or show
21 mitigation?

22 MR. DIAZ: Well, Your Honor, the mitigation that we
23 would show and that they would testify to is consistent
24 with what I proffered to the Court.

25 JUDGE: Well,

1 MR. DIAZ: They're all aware of the changes that have
2 taken place, and with the processes now, and what we've
3 done to try to prevent this kind of thing from happening
4 again.

5 JUDGE: But you see, I haven't heard you say what the
6 process was, that is any different from what the process
7 used to be, which is I'm gonna hedge my bet, I'm gonna have
8 a good faith believe that I'm gonna be in compliance, and
9 I'm gonna have everything ready by the time the hearing
10 comes up. But what I'm saying to you is I don't believe
11 that you should be setting hearings until you are ready.

12 MR. DIAZ: And I'm telling you, and I think I've
13 stated this the new process is that we are not going to set
14 the hearing unless and until everything within our control
15 is in our hands, and we then are, we know, absent a third
16 party action, that we can proceed with the hearing. So we
17 have a review of the file. We make sure we have the
18 evidence of the debt, the evidence of the mortgage,
19 evidence of the indebtedness, any necessary Affidavits.

20 JUDGE: Well, I know what's required sir.

21 MR. DIAZ: Okay. Well what

22 JUDGE: I, I actually do know what's required.

23 MR. DIAZ: And, and I, I'm, but, you're asking me, I
24 feel like you're asking me for some level of detail. So,

1 JUDGE: I, I am. That's precisely what I'm asking
2 you.

3 MR. DIAZ: Well,

4 JUDGE: Because you're telling me that this isn't
5 going to happen again, I'm taking Mr. Cox's word and his
6 apology back in April saying I'm sorry, we will take care
7 of this, this won't happen again, and then it happened on
8 the very next hearing that you scheduled. I'm not
9 satisfied with you saying I've taken care of it because as
10 of today, at eleven o'clock, you sir, had not taken care of
11 it.

12 MR. DIAZ: Well, I can tell you that the process to
13 take care of it was not implemented when Mr. Cox apologized
14 to you. I can tell you that that process has since been
15 implemented. I can tell you candidly Your Honor, and I
16 said it earlier, to the extent that the process is not
17 perfect if something slips through, that's something we
18 have to deal with when we find out about it. And like I
19 said earlier as well, I don't know how many of these cases
20 we have caught and we have properly cancelled. I'd have
21 to, I'd have to identify this 2007 case to find out what
22 happened with this case. But the difference is, and this
23 is the issue, the difference is there is a process that has
24 gone in effect that has put us in a position where we've
25 completely changed the approach to setting hearings so that

1 we're not setting hearings until and unless we know that
2 everything within our power, or within our control is in
3 our control, in our hands, and we can assure the Court that
4 we're gonna be able to have a hearing on the date that it's
5 set. That is the distinction. That's the difference. That
6 process is in place. That's the new process.

7 JUDGE: Okay. Um, Mr. Peterson, do you want to, uh,
8 add anything here? Because we, we are well, we are well
9 out of time. But I am clearly not finished. So,

10 MR. PETERSON: Understood Your Honor. I'd just like
11 to say that, uh, and before we even filed our Motion to
12 Compel, we did send a letter to, um, Mr. Diaz's law firm
13 asking what was happening with the case. We didn't receive
14 a response. After the Motion to Compel, I was in contact
15 with one of his lawyers, Ms. Simpson, uh, via e-mail. She
16 did assure us that the case would be resolved, and set for
17 Motion for Summary Judgment, and that didn't happen. The
18 frustration on the part of my client, is, I think, the same
19 as the Court's that, we look for these dates when they're
20 noticed for hearing for the Motion for Summary Judgment,
21 and, and I, as an attorney, go back to my client and say,
22 the finish line is approaching. Uh, we are gonna get this
23 case resolved. And then I have to, when the case is
24 cancelled at the last minute, I have to go back to my
25 client, explain to my client why it's not being resolved,

1 and why the Court is giving the Plaintiff a, another bite
2 at the apple. And, uh, the frustration from my practice
3 is, uh, I don't have a lot of control on that. The only
4 thing I can do is come to the Court as we did in this case,
5 and point out situations where we think this has gone on
6 long enough. This case ought to be resolved. As fate
7 would have it, the, uh, 2007 case you, uh, you talked about
8 this morning, that was set for eleven a.m., that's another
9 one of my clients. In that's Riverdale. Uh, I recognized
10 the name, uh, because it's a 2000 case, 2007 case. And
11 it's been taking a long time. It's, it's an endemic thing
12 that, that's occurring again and again. I know the Court
13 is concerned about it. I take Mr. Diaz at his word that
14 he's concerned about it, and he's trying to make changes
15 to, uh, uh, so that these things don't happen. But the,
16 the fact remains that my client's are suffering because the
17 longer these cases stay, uh, the longer they're not being
18 paid assessments by the defendants. They're not being paid
19 assessments by, uh, by the banks, and it's causing havoc to
20 our community association clients. That's all I have to
21 say.

22 JUDGE: So, are you requesting any sanctions as a
23 result of this?

24 MR. PETERSON: I would request my client's attorney's
25 fees in this case. Just because it is taking an inordinate

1 amount of time, and, you know, for the time, that, at
2 least, since uh, we filed in, and the Court granted the
3 Motion to Compel, um, you know, it's, it's a further
4 expenditure of attorney's fees, and every time I have to
5 show up, it just costs my client more and more money.

6 JUDGE: Judge. Um, you'll need to file a Motion. Um,
7 Mr. and Mrs. De Freitas, is there anything that you would
8 like to say?

9 MS. DE FREITAS: Yes. Um, I would like to say that we
10 have paid our, uh, late assessment, assessed to the
11 [INAUDIBLE] Association. That's something I have, we have
12 paid everything.

13 JUDGE: Okay.

14 MS. DE FREITAS: We have an agreement with them.

15 JUDGE: Okay. Um, and am I correct that the, there
16 was no other additional expenses other than the four
17 hundred dollars that was lost in wages for coming to a
18 hearing that had not been cancelled and, um, paying the
19 interpreter. Is there, was there any other loss at that
20 point that you are requesting?

21 MS. DE FREITAS: No ma'am.

22 JUDGE: Okay. So you know that the case has been
23 dismissed against you?

24 MS. DE FREITAS: Right, yes.

1 JUDGE: Have you had any communication with, um,
2 anyone as to what they are going to do or?

3 MS. DE FREITAS: Well, we have another attorney on our
4 side, because they are defending us, um, regarding
5 [INAUDIBLE] that the bank don't have it. So we can't prove
6 that they own, they are the owner of our house. So we want
7 to make sure everything goes well, so in the future, we
8 don't want to have any problem.

9 JUDGE: Okay. Um, this proceeding that I've am
10 continuing on today, um, I had previously taken evidence
11 regarding the four hundred dollars, uh, in lost wages and
12 the fifty dollar expense. Um, I, and so I will not be
13 asking for any additional evidence from you inasmuch as I
14 don't see that there's any, any other compensatory, uh,
15 issue, uh, with regard to your loss. Um, I don't know
16 whether the home owners, I mean, whether the bank will be
17 refiling the home, the mortgage. This does not mean that
18 they can't, but the matters in this case number are over as
19 it relates to you. So, rather than impose any additional
20 expense, um, uh, the Court is not gonna require that you
21 appear, uh, again unless I specifically notice you, um,
22 saying the Court has ordered that you do come, uh, unless
23 you receive some sort of subpoena or something like that,
24 in this case number. That is not to say that you would be

1 excused from any other proceeding should the foreclosure be
2 refiled. You would have to appear in that case. Okay.

3 MR. PETERSON: Your Honor, I did, uh, notice we filed
4 an Affidavit of Attorney's Fees on 8/23 and that's e-filed
5 the report.

6 JUDGE: Okay.

7 MR. PETERSON: Um, just to make it simpler, uh, I
8 would request fees from November 18th, 2009 for preparation
9 and filing of the Motion to Compel forward.

10 JUDGE: All right.

11 MR. PETERSON: And if the Court wishes, I'll submit a
12 supplementary Affidavit after I've added that up.

13 JUDGE: Uh, that's a total of seventeen hundred
14 dollars?

15 MR. PETERSON: That's for all.

16 JUDGE: Seventeen sixty eight?

17 MR. PETERSON: That's all fees in the case Your Honor.
18 I think it's only probably appropriate from the filing of
19 the Motion to Compel forward from 11/18/2009.

20 JUDGE: Okay. I can submit your Affidavit.

21 MR. PETERSON: I will do so.

22 JUDGE: Do you wish to make any inquiry or, uh, take
23 his testimony while he's here?

24 MR. DIAZ: No, I, we'll wait to see the Affidavit and,
25 we'll,

1 JUDGE: Okay.

2 MR. DIAZ: Look at that at the time.

3 JUDGE: All right. Um, Mr. Cox, do you wish to
4 testify or do you wish to adopt the, uh, let me, Mr. Diaz,
5 raise your right hand. Do you solemnly swear that all of
6 the testimony you have previously given is true and correct
7 to the best of your knowledge and belief?

8 MR. DIAZ: Yes, I do.

9 JUDGE: Okay. Do you wish to, um, add anything Mr.
10 Cox?

11 MR. COX: Your Honor, I'm gonna adopt the, uh,
12 previous [INAUDIBLE].

13 JUDGE: Okay. Um, Ms. Tedeska? Do you wish to
14 testify or present any other mitigation in this case?

15 MS. TEDESKA: I will do the same as Mr. Cox. Adopt,
16 um, the proffer.

17 JUDGE: May I ask you ma'am, did you, um, did you make
18 the statement that you would not be changing your
19 procedures, your policies until such time as you were
20 sanctioned? Did you ever make that statement?

21 MS. TEDESKA: That our firm would not change its
22 procedures until such time as we were sanctioned?

23 JUDGE: That, that you would not be complying with the
24 Orders of the, the Rules of the Court, unless you were
25 sanctioned?

1 MS. TEDESKA: I don't recall any statement like that,
2 whatsoever.

3 JUDGE: Okay.

4 MS. TEDESKA: Um, I don't know of what you speak
5 frankly.

6 JUDGE: Okay. Um, Ms. Strauss, do you wish to present
7 any, um, additional mitigation or, uh, give any testimony?

8 MS. STRAUSS: No Your Honor.

9 JUDGE: Do you adopt the testimony of Mr. Diaz?

10 MS. STRAUSS: Yes Your Honor.

11 JUDGE: Is that your testimony then as well?

12 MS. STRAUSS: Yes Your Honor.

13 JUDGE: All right. And, uh, Mr. McMillan?

14 MR. MCMILLAN: Yes, I'll adopt the same testimony as
15 Mr. Diaz.

16 JUDGE: Okay. All right. Mr. Diaz, and, um, all of
17 you. I find that you are in civil contempt of the Court. I
18 find that you have violated not only the creed of
19 professionalism, which I do quote, um, that says I will
20 conduct myself to assure the just, speedy and inexpensive
21 determination of every action, and resolution of every
22 controversy and it further goes on to say, I will respect
23 the time and commitments of others. Further goes on to
24 say, that I will be diligent and punctual in communicating
25 with others and in fulfilling commitments. Under the oath

1 that you took to admission to the Florida Bar, it states,
2 uh, and you swore that I will maintain the respect due to
3 the Court of Justice and Judicial Officers. The Court
4 finds at this time, that the um, that the conduct in this
5 case regarding your policies and procedures for scheduling
6 hearings without being, uh, prepared with, or failing to
7 notify, uh, the, uh, opposing parties of the cancellations
8 of this hearing, uh, caused, um, both time and expense and,
9 um, injury to the attorneys, their clients, and the
10 parties. The Court finds that, uh, the failure to
11 communicate the cancellation of the hearings, uh, is a
12 total disregard for the consequences, uh, of the Courts
13 calendars and the efficient, um, operation of justice. The
14 Court finds that your noncompliance, um, was so grossfully
15 negligent that it rises to the level of willful misconduct,
16 particularly after the firm was notified through Mr. Cox
17 specifically of this case, specifically of the prior
18 failures to appear and specifically warned that he was
19 violating his code of ethics by continuing to practice in
20 this matter, and thereafter the very next hearing, um, the
21 same issue occurs. The Court finds that the, that this
22 disobedience of the Court, uh, calendars and rules
23 regarding the setting and the cancellation of hearing, that
24 the disobedience regarding the administrative orders
25 regarding the handling of mortgage foreclosure cases is

1 deliberate, it is willful, it is flagrant and it is, uh, an
2 evidence of contempt. This is not inexperience. This is
3 not neglect. The court notes that the law firm had been
4 previously, uh, warned, um, by the, um, Hillsborough County
5 regarding, uh, their conduct, uh, as sham, uh, regarding
6 their conduct regarding sham pleadings. The Court finds
7 that the filing of a Notice of Hearing, um, is, in fact, a
8 sham, when no one shows up, and no one appears, uh, no one
9 cancels and it is clear from the history of this case that
10 those Notices of Hearing, um, there was no intention to
11 proceed, uh, because clearly your were not prepared. The
12 Court finds, um, that, uh, particularly Mr. Cox, on this
13 issue was noticed and warned. The Court finds that there
14 is a, uh, no reasonable justification for the
15 noncompliance, that the fact that you run your business the
16 way that you do is not an excuse, nor is it any, um,
17 justification for the Court to, um, practice law, uh, the
18 way that you do. The Court finds there was prejudice to
19 the undue, to the, uh, opposing party. I find that this is
20 created a significant, uh, problem in the Court's calendar,
21 and that your continuous, uh, scheduling of hearings
22 without, uh, uh, notification that you are cancelling them,
23 in no way, is respectful of the Court. And therefore, on
24 the issue of, I also point out that, um, Attorney Gavin
25 McMillan was given notice that, uh, he was in, that he was

1 instructed to compel this case to proceed within 90 days,
2 which would have been, uh, over in May of 2010, that the
3 hearing was scheduled for April of 2010, but again he
4 didn't appear. Mr. Cox was on that Notice of Hearing as
5 opposed to Mr. McMillan. The Court finds that, uh,
6 compensatory fines to the Homeowners Association are in
7 order. And the Court will require that, um, the law firm
8 and / or each of you individually shall, uh, pay the
9 attorney's fees of the Association, uh, from the date of
10 the Motion to Compel forward. The Court finds that based
11 on, um, the failure to uh, notice the opposing party, nor
12 the Court of the cancellation of the last hearing, which I
13 believe would have been number six or seven, um, the
14 defendant's did appear. They lost wages in the amount of
15 four hundred dollars, and paid fifty dollars to an
16 interpreter. You will pay that. I have taken testimony on
17 that, but since you were not here, uh, you waived your
18 right to cross examine him about that. I take Judicial
19 Notice of the fact that as of today at eleven a.m., uh, Mr.
20 Cox, again filed a Notice of Hearing for, uh, the state and
21 10 days after the Court issued this Order and he did not
22 appear, nor notify anyone of the cancellation of that
23 hearing. That scheduling seven hearings on the court's
24 calendar and failing to appear at all but one of them,
25 which was the Motion to Compel, um, the Court finds that

1 that is a, um, direct and, uh, willful disregard for the
2 Court and the administration of justice. And, therefore, I
3 find you in contempt and I find that the, uh, evidence
4 presented today, uh, is vague, and, uh, inasmuch as counsel
5 indicated that these new procedures were supposed to be in
6 place and in fact, failed as even, uh, today, having been
7 supposedly in effect, um, for a couple of weeks, uh, that
8 the Court has no, uh, assurance that, uh, this cannot, uh,
9 that this problem will not proceed. The Court will require
10 that you will create policies and procedures internally
11 that will ensure that attendance at hearings and being
12 prepared, um, be, on the Motion prior to scheduling the
13 Court's calendar is in place. The Court will require that
14 each of your, uh, that, that the, that the Court receive
15 certification from each of your attorney's as well as your
16 supports staff, that, in fact, these policies and
17 procedures are in place. That you will not, uh, schedule
18 hearings with the Court until such time as all of the
19 documents have been received. And that you will, um, go
20 forward today, uh, and within five days, um, provide a, uh,
21 receipt of the Court that all cases in Manatee County have
22 been reviewed and that all hearings that are presently
23 scheduled are docketed on your attorney's calendar, and
24 that shall be signed by the attorney who will be assigned,
25 uh, to, uh, appear at that hearing. The Court finds that,

1 um, there shall be imposed a daily fine for failure to
2 comply and that will be seven thousand dollars per day
3 until such time as I receive, uh, the certified, um, letter
4 from each of your attorney's, uh, that they have made
5 arrangements to appear when they are scheduling hearings.
6 The Court finds that there are coerced that, coercive fine
7 should be imposed, uh, and the Court finds that the
8 appropriate amount is, um, forty nine thousand dollars.
9 That will be seven thousand dollars for each hearing that
10 you failed to appear. Um, does anyone have any questions?
11 Clarifications? Anything else that you would like to say?
12 Court does reserve on the issue of finding indirect
13 criminal contempt, and should the court, uh, should your
14 failure to comply with these procedures, uh, not occur, um,
15 within the purge time, then, um, then I may proceed with
16 that.

17 MR. DIAZ: Your Honor, if, uh, I could get some
18 clarification on

19 JUDGE: Uh hum.

20 MR. DIAZ: um, the purged time. What, what is the
21 time that's being permitted to purge the contempt?

22 JUDGE: The contempt, uh, the forty nine thousand
23 dollars is a coercive fine for your failure to previously
24 appear at seven hearings. Your seven thousand dollars per
25 day, which is what you testified it costs your firm to be

1 here, um, will begin, uh, will begin calculating as of, um,
2 Friday, and um, will continue until such time as I have
3 received the documentation of your policies and procedures.

4 MR. DIAZ: And to, can you give me some clarification
5 of what exactly that documentation that you're asking us to
6 produce is?

7 JUDGE: I want to see the, um, I want to see your
8 policy and your procedures for scheduling hearings. I want
9 to see and I have you identify for me who is going, when a
10 hearing is scheduled, who is going to appear, and I want a
11 verification from each one of your lawyers that they have
12 read your policies and procedures, that they have read the
13 12th Judicial Circuit Policies and Procedures and that they
14 have read my policies and procedures, and that they have
15 recorded that hearing on their calendars and will appear.
16 Can you do that Mr. Cox?

17 MR. COX: I can Your Honor. I do have a question if I
18 may. Um, are we entitled to set a hearing if we will have
19 a local attorney contracted from our office appear in our
20 stead?

21 JUDGE: Uh, that is a very good question Mr. Cox. And
22 here is the problem with that. When you hire a lawyer, and
23 that lawyer comes in and says to me, um, I got an email
24 this morning. I have no information about the case, that I
25 have no file. Then you are doing nothing that assists the

1 Court. So the answer to that question, at this time, will
2 be no. Let's say, um, that if you want to appear before
3 me, I'll be here through January. Well, through December.
4 So, if you want any hearings before me, I suggest that
5 maybe you make arrangements to be here yourself.
6 Especially you.

7 MR. COX: Understood Judge.

8 JUDGE: Okay.

9 MR. DIAZ: Um, with reference, uh, the verification
10 that you want from the attorney's, you want those from the
11 attorney's that have been listed in this Order?

12 JUDGE: Um, I want them from all of your attorneys who
13 are practicing or will practice or will file any document
14 in Manatee County.

15 MR. DIAZ: So, assuming you have this information by
16 Friday, the seven thousand dollar a day issue is resolved?

17 JUDGE: That is correct.

18 MR. DIAZ: And what is the time on the, uh, as far as
19 the purge with the forty nine thousand dollars?

20 JUDGE: When would you like it? Okay. Thirty days.

21 MR. DIAZ: Okay.

22 JUDGE: And, um, you will pay to the defendant the four
23 hundred and fifty dollars, um, within 10 days from today's
24 date.

1 MR. DIAZ: Who is the forty nine thousand dollars
2 payable to?

3 JUDGE: The Clerk. We wish it could go into the Court
4 fund, but it's a compensatory, I mean it's a coercive fine
5 and so it goes into the, uh, fines and forfeitures. I will
6 let you know within 60 days whether I wish to proceed
7 further with the indirect criminal contempt.

8 MR. DIAZ: I would like the record to reflect that the
9 case that you referenced from Hillsborough, as I stated
10 earlier, was resolved and that issue has not come up again.
11 And we did make the corrections that the Court asked us to
12 make and those corrections have resolved that issue.

13 JUDGE: Okay. And, perhaps I would have been more,
14 um, likely to accept your explanation as to what you have
15 done had, um, it not just happened again. So, all right.
16 Um, I will prepare a written order and, um, as soon as I
17 receive the Affidavit of Attorney's Fees, if you wish to
18 challenge that, we can have another hearing. If you wish
19 to accept the amount, then you can sign the stipulated
20 Order that you'll pay it within whatever time. Mr.
21 Peterson, do you agree?

22 MR. DIAZ: And just so that I'm clear, the timelines
23 that we're discussing today, those are going to be as of
24 the date of the written order, correct?

25 JUDGE: Uh, no, those are as of today.

1 MR. DIAZ: I'd ask the Court to con, reconsider that.
2 I, I, having the written order as the, as the document that
3 sets for these sanctions, I think it would be appropriate
4 that the timeline commence from the date of the written
5 order.

6 JUDGE: Okay. I will, um, allow the timeline to
7 commence from the date of the written order with the
8 exception of payment to the defendants, who have appeared
9 here every time you noticed them to be here.

10 MR. DIAZ: I, I have no problem with that. And that
11 payment will be mailed to the property address unless there
12 is an objection.

13 JUDGE: Is that where you're still getting mail?

14 MS. DE FREITAS: [INAUDIBLE].

15 JUDGE: Yes.

16 MR. DIAZ: Yes?

17 JUDGE: Yes. All right. Thank you very much.

18 MR. PETERSON: Thank you Your Honor.

19 I, Lisa D. Wenger do hereby certify that the foregoing 60 pages
20 of this transcript fairly and accurately represent the Hearing
21 tape recorded on August 30, 2010 in the case of HSBC Bank USA
22 versus De Freitas, Case Number 2007-CA-007993.

23
24 Lisa D. Wenger
25 Lisa D. Wenger

9/8/10
Date

ERRATA SHEET

PAGE #	LINE #	CORRECTION