

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 50 2010 CA 0212146XXXXMB

SHAPIRO AND FISHMAN,

Petitioner,

vs.

STATE OF FLORIDA, ATTORNEY

GENERAL, DEPARTMENT OF

LEGAL AFFAIRS,

Respondent.

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TRANSCRIPT OF PROCEEDINGS

BEFORE

THE HONORABLE JACK SCHRAMM COX

205 N. Dixie Highway

West Palm Beach, Florida 33401

September 30th, 2010

9:30 a.m. - 10:00 a.m.

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**APPEARANCES:**

For the Petitioner(s):

GERALD RICHMAN, ESQUIRE  
Richman Greer, P.A.  
250 S. Australian Avenue, Suite 1504  
West Palm Beach, Florida 33401

For the Respondent(s):

JASON VAIL, ESQUIRE  
THERESA EDWARDS, ESQUIRE  
JUNE CLARKSON, ESQUIRE  
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Fort Lauderdale, Florida 33301

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**THEREUPON:**

**THE COURT:** So are we missing somebody?

**MR. VAIL:** The Petitioner. I thought they were just coming down the hallway.

**THE COURT:** Anything?

**MR. VAIL:** No, sir. Not yet.

**THE COURT:** All right. Let go ahead. Let's go on the record.

(Thereupon, a discussion was held of the record.)

**THE COURT:** All right. Let's go ahead and go on the record.

This is the case of Shapiro and Fishman, LLP, Petitioner v. State of Florida, Attorney General, Department of Legal Affairs. Case Number 50 2010CA021246XXXXMB, Division AN.

For the Petitioner, they do not appear that this time. And it's about 9:34 by my clock here in the courtroom.

So, for the State of Florida, the Respondent?

Oh, I'm sorry. Mr. Richman, come on in.

**MR. RICHMAN:** Yes, sir. I apologize, Your Honor.

**THE COURT:** Okay. Well, we're just going to get started here.

So why don't you get your things out and let me go ahead and get the Respondent.

1 For the Respondent?

2 **MR. VAIL:** Jay Vail, Your Honor with Theresa Edwards  
3 and June Clarkson.

4 **THE COURT:** I did not - I apologize. Tell me your  
5 name, again?

6 **MR. VAIL:** Jay Vail, Your Honor.

7 **THE COURT:** Mr. Vail, please be seated. It's good to  
8 see all you here.

9 **MS. EDWARDS:** I'm Theresa Edwards. I'm also appearing  
10 on behalf of the Attorney General's Office.

11 **THE COURT:** Okay.

12 **MS. CLARKSON:** June Clarkson on behalf of the  
13 Attorney General's Office.

14 **THE COURT:** Okay. It's good to have you all here.  
15 All right. And for the Petitioner?

16 **MR. RICHMAN:** Your Honor, Gerald Richman and Leroy  
17 Ferre from Richman and Greer.

18 **THE COURT:** Okay. Glad to have you here.

19 All right. This morning what I have is the Petition  
20 to Quash the Attorney General's investigative subpoena  
21 duces tecum.

22 So Mr. Richman you may proceed.

23 **MR. RICHMAN:** Your Honor, I'm going to make it  
24 relatively short. I'd like to reserve five minutes for  
25 rebuttal.

1           **THE COURT:** Okay. What I've scheduled is thirty  
2 minutes for today. And I do have a trial that I've got  
3 waiting.

4           So I'm going to have to hold you all to it. At 10:00  
5 I have to break no matter what. So go ahead.

6           **MR. RICHMAN:** And that's fine. I'm going to rely  
7 heavily in terms of what we have filed.

8           But to bring to Your Honor's attention one item that  
9 is not anywhere in the pleadings.

10          **THE COURT:** Okay.

11          **MR. RICHMAN:** And that is the Florida Supreme Court's  
12 ruling, I believe yesterday or two days ago, where  
13 Congressman Grayson had asked that all foreclosure  
14 proceedings be halted in the State of Florida. And the  
15 Florida Supreme Court states that it did not have  
16 jurisdiction with regard to that. And that would be a  
17 matter to be taken up through the Florida Bar.

18           And I think that's truly significant because the  
19 first part of our argument they don't actually refute. We  
20 rely upon Chief Judge Moreno's ruling in Kelly v. Palmer,  
21 which is a February, I believe, 2010 ruling on the issue  
22 of jurisdiction for matters of this nature where clearly  
23 what is involved is legal services.

24           Now I preface it by pointing out to Your Honor, as we  
25 did in our motion, that we were never contacted

1 voluntarily to provide this. We would have voluntarily  
2 cooperated to the extent that we can without violating  
3 attorney/client privilege or trade secrets.

4 We would have provided them with documentation  
5 voluntarily.

6 Instead they chose to go ahead and issue a subpoena.  
7 On the face of the subpoena, which is what should give  
8 them jurisdiction if they had it all over a law firm, they  
9 say they're investigating advertising and marketing  
10 practices of the law firm.

11 And there are none. And they know there are none.

12 And they have said in their reply, gee, that's just a  
13 scrivener's error.

14 Well that's outrageous. To go ahead and have a  
15 pleading of this substance that in fact is accompanied by  
16 a press release that goes way beyond that. You know,  
17 Hotly Contested Political Campaign Era by the Attorney  
18 General. That should go ahead and tar and feather this  
19 law firm with regard to a subpoena that on its face is  
20 totally defective. That's point number one.

21 Point number two is the jurisdictional issue in Kelly  
22 v. Palmer.

23 These are legal services. This is not trade or  
24 commerce. As was found, specifically, by Judge Moreno in  
25 that case. They simply don't have jurisdiction to go

1 after a law firm.

2 Point number three, which we've address. The over-  
3 breadth, the fishing expedition nature of what they've  
4 done.

5 Can you imagine going ahead and subpoenaing somebody  
6 and saying I want to know every investigative aid,  
7 everything you've done in the last five years, both  
8 individually as well as the law firm. That would be every  
9 stock and bond. Everything that they've done.

10 There has been no reasonable effort to limit that.

11 We met with them and we said limit what you've got  
12 and we'll voluntarily -- We don't think you have  
13 jurisdiction. But, we'll voluntarily give you information  
14 that is not attorney/client privileged.

15 We wait for a letter. We're still waiting for the  
16 letter. For them to come and limit that.

17 I called them again and asked them for that. We  
18 still don't have it.

19 Instead they give us a response.

20 Your Honor, the response on its face says we're  
21 limiting, we're limiting, we're limiting.

22 Compare the original subpoena to what they now say is  
23 limiting. They haven't limited, virtually, anything.

24 They actually added the word Echeverria in one of  
25 their responses which has nothing to do with this case.

1 Sloppy drafting. Again, probably another scrivener's  
2 error.

3 But the bottom line is there's really no good faith  
4 attempt, at this point, to go ahead and modify what's  
5 there.

6 We are will to voluntarily work them and tell the  
7 world that we're willing to go ahead and do that.

8 But, Your Honor, has seen -- You have to have  
9 blinders on not to see the press with regard to some of  
10 the institutions saying we've made mistakes.

11 But the law firm is not to be tarred with any of the  
12 mistakes made by the client with regard to affidavits that  
13 they prepared at their offices where mistakes were made.

14 That's a far different cry in terms of the law firm  
15 and stuff.

16 For example, they showed us two affidavits that had  
17 been sent in my the client. And they said, look, you can  
18 see if the face of that -- well, they're both notarized --  
19 that the signatures are different.

20 Well in the processing of tens of thousands of  
21 mortgage foreclosure, which the law firm has an obligation  
22 to do under the Fannie Mae guidelines, they actually get  
23 penalized if they don't process things expeditiously.

24 They reason that law firms like Shapiro and Fishman  
25 have gotten to be called so-called foreclosure mills is



1 because they have the expertise. They've been in business  
2 as a law firm more than twenty years. And they have a way  
3 to process these more efficiently and effectively which  
4 saves the institutions money.

5 That's not to say that mistakes are never made. But  
6 we're tarred and feathered with the mistakes of a handful  
7 number of items.

8 And we're willing to do whatever is reasonable to do  
9 to put in greater precautions with regard to that.

10 But we can't be tarred and feathered with a mistake  
11 that may have been made by a client.

12 Our law firm is doing -- The law firm that I  
13 represent is doing its job as lawyers and doing it  
14 professionally. And the Attorney General -- No question  
15 they've got complaints. Because, there are lawyers out  
16 there they should be investigating; some of those lawyers  
17 who are defending and who are going ahead and raising  
18 phoney issues.

19 And I know Your Honor has some real estate background  
20 and Your Honor would know the difference between an  
21 Assignment of Mortgage and Note.

22 They're basically trying to say there are problems  
23 with the Assignment of Mortgage that should affect the  
24 foreclosure itself.

25 It's the holder of the Note, as I'm sure Your Honor

1 knows, that is determinative.

2 The bottom line is, number one, they don't have  
3 jurisdiction. They don't have jurisdiction partly because  
4 of the litigation privilege and partly because of the  
5 supervision of the Florida Bar, in filing. Because, as  
6 determined by Judge Moreno, legal services are not within  
7 the definition of trade and commerce.

8 Secondly, it's completely over broad and violates the  
9 scope of the subpoena.

10 And with that, Your Honor, I'll reserve the remainder  
11 of time for rebuttal.

12 Thank you, sir.

13 **THE COURT:** Thank you. Mr. Vail?

14 **MR. VAIL:** Your Honor, it appears that we really  
15 don't need to be here at all. This is matter that you  
16 probably should just send us out and have us talk about  
17 this and find out a way to satisfy their concerns and  
18 reach a compromise and narrow the subpoena to the extent  
19 that it's necessary in order to satisfy both the Attorney  
20 General's interest and the concerns of the parties.

21 Clearly, this is something that should be worked out  
22 with negotiation.

23 With that aside, let me address, Petitioner's points  
24 in the order they were raised. Bearing in mind that the  
25 fundamental principle that investigative subpoenas are

1           presumptively valid. They're within the authority of the  
2           agency to give. They are indefinite. They're reasonably  
3           related to focus the investigation.

4           The front of the subpoena does mis-state the purpose  
5           of the investigation. But there is no requirement that the  
6           subpoena state the focus of the investigation.

7           **THE COURT:** You mean where it talks about  
8           advertising?

9           **MR. VAIL:** Yes, Your Honor. That's a mistake. That  
10          shouldn't have happened. I apologize for that. And I  
11          apologize to the law firm for that.

12          But even so, the purpose of the investigation is no  
13          surprise to this law firm. It's not surprise to their  
14          clients.

15          They're well aware of the turmoil that exists in the  
16          community over the documents that have been used to obtain  
17          property interests in the mortgages of Florida homeowners.

18          These documents are not just being used in court. We  
19          have reason to believed that they're being filed in the  
20          public records in order to provide further evidence of  
21          these claims of property interests. These are not  
22          adequate and relate necessarily to legal services.

23          There is no Florida court that has determine to what  
24          extent -- whether and to what extent attorneys are subject  
25          to the provision of 501, Part 2. And if you look at the

1 cases from other jurisdictions it goes back and forth.  
2 And they all reach different results. It's not clear  
3 exactly where the line falls. There probably is a place  
4 where lawyers work is covered. But there's -- In other  
5 jurisdictions they have that.

6 Now, in fact, in the Echeverria case which  
7 Mr. Richmon mentioned, that was a long running class  
8 action by consumers against law firm brought under 501 in  
9 Tallahassee. I went to -- Ultimately it was settled.

10 It made to trips. It made a trip to the Supreme  
11 Court. And it made two trips -- two opinions from the  
12 DCA. They're not on issues that are really relevant to  
13 what we are here for today.

14 **THE COURT:** Right. That court didn't find anything  
15 that had to do with whether attorneys can come under  
16 FDUPTA at all. What they were talking about there was the  
17 litigation privilege. Correct?

18 **MR. VAIL:** Well the case that I'm familiar with  
19 really dealt with that and with the classification  
20 question.

21 **THE COURT:** Okay. But, I mean, as we sit here today,  
22 you're traveling under a subpoena that would come under  
23 501. And so, you really can't to go Echeverria and say --  
24 point to that and say they said 501 is an effective  
25 vehicle for the Attorney General's Office to use?

1           **MR. VAIL:** No, I'm not bring it up for that purpose,  
2 Your Honor --

3           **THE COURT:** Okay.

4           **MR. VAIL:** -- what happened in that case. I went to  
5 look at the case file. It's been destroyed. I talked to  
6 one of the lawyers that handle the case. No one ever  
7 questioned whether 501 applied to that behavior that was  
8 genesis of the claim.

9           **THE COURT:** Take me if you would -- I don't mean to  
10 interrupt. But take me if you would to Kelly v. Palmer.  
11 What do think of that? What do you think of the Southern  
12 District's ruling there.

13           **MR. VAIL:** Well I don't think it applies here because  
14 we're looking at matters that go beyond necessarily the  
15 Division of Legal Services. And it doesn't necessarily  
16 have to do with this law firm.

17           **THE COURT:** But the subpoena does.

18           **MR. VAIL:** Well, the subpoena actually --

19           **THE COURT:** I mean the subpoena asks them for  
20 information. Right?

21           **MR. VAIL:** About their client. As he stood here  
22 today he said that his client is providing him with these  
23 documents.

24           **THE COURT:** Okay.

25           **MR. VAIL:** We don't know who's responsible for this.

1 We know that they -- They appear to be involved.

2 **THE COURT:** Well, let me ask you this? Would it be a  
3 correct statement that what the Attorney General is  
4 seeking to do is to use the remedy of investigation under  
5 501 to go to a law firm to inquire into what was, I guess  
6 for lack of a better phrase, would be bad behavior or  
7 mis-behavior in court proceedings. Correct?

8 **MR. VAIL:** Well it doesn't -- Investigation isn't  
9 just looking at that. It's looking at behavior that  
10 occurs outside the courtroom, that has implications and  
11 effects outside the courtroom. It doesn't necessarily  
12 that the law firm is the bad apple. They're simply the  
13 source of the information. As if they were a witness who  
14 might have information about the bad apples somewhere  
15 else.

16 **THE COURT:** Yes, but I mean when you look at your  
17 subpoena, it's a very broadly phrased document. You're  
18 asking for a lot of the internal operations of this law  
19 firm and asking them to give information about things that  
20 appear on its face, to me, to be directed at things that  
21 they have done that are mis-behavior in court proceedings.

22 Because it's not -- This law firm -- there's no  
23 allegation that this law firm has ever represented any of  
24 the people that have complained. Correct?

25 **MR. VAIL:** I don't believe that's true, Your Honor.

1           **THE COURT:** Let me take you to -- And, again, I don't  
2 want to sidetrack you. But if you're traveling under 501,  
3 would you agree with me that in 501.205, that's the rule-  
4 making authority that the Department has the ability to  
5 makes rules to implement the FDUPTA requirements.

6           **MR. VAIL:** I think that's right.

7           **THE COURT:** In that, the legislature has said that  
8 for them to do that, that 120 -- Chapter 120 is the method  
9 by which PDUCTA is ruled. Would you agree with that?

10          **MR. VAIL:** It would be.

11          **THE COURT:** Right. So when you look at 120, though,  
12 the first thing that 120 tells is that 120 doesn't apply  
13 to either the legislature or the courts. Would you agree  
14 with that?

15          **MR. VAIL:** Not it does not.

16          **THE COURT:** For the record, just to be clear; 120  
17 doesn't apply to the legislature or the courts?

18          **MR. VAIL:** Correct.

19          **THE COURT:** That's what -- It does say that? All  
20 right.

21                 So here's where, I guess, I need you to help me out,  
22 is that if you think the Attorney General's Office has the  
23 authority to go out and to do these kinds of  
24 investigations and the legislature empowered you to adopt  
25 rules, by the very nature of the empowerment provisions it

1 says that you can't adopt rules under 120 because they've  
2 already previously said you can't adopt rules as the  
3 courts or to the legislature.

4 So how are you getting to Officers of the Court with  
5 this?

6 **MR. VAIL:** Your Honor, they're like witnesses to any  
7 other violation of law.

8 **THE COURT:** Okay. Well are you talking about a  
9 violation of law that's civil or criminal?

10 **MR. VAIL:** Your Honor, you yourself could be  
11 subpoenaed by the State Attorney to be a witness in a  
12 crime.

13 **THE COURT:** No question about crime. I'm asking --  
14 This isn't a crime. You're not using the subpoena for  
15 purposes of investigating a crime. This is a civil matter.  
16 Correct?

17 **MR. VAIL:** Correct, Your Honor. But the power to  
18 issue subpoenas isn't limited only the alleged bad actor.

19 **THE COURT:** Okay. But in this particular case, the  
20 only basis upon which you're asserting authority to send  
21 the subpoena out is under FDUPTA. It's not under any  
22 other basis.

23 **MR. VAIL:** Well that's exactly what I'm saying Your  
24 Honor. If you go back to the statute that deals with  
25 subpoenas it just says gathering evidence.



1           **THE COURT:** Okay.

2           **MR. VAIL:** It's doesn't say -- It doesn't limit -- It  
3 doesn't say you can only gather evidence from the alleged  
4 bad actor.

5           **THE COURT:** Okay.

6           **MR. VAIL:** And that's the issue here. We're not  
7 saying necessarily that the law firm is the bad actor. The  
8 law firm has -- We believe it has evidence that may  
9 implicate either itself or others in acts that are within  
10 the reach of 501.

11           **THE COURT:** Well -- And let me just -- I hate to  
12 interrupt you. But tell me in the subpoena where it says  
13 that we're looking for you give us information about some  
14 bad actor. It doesn't say that anywhere? Does it.

15           **MR. VAIL:** Well the basic thrust of the subpoena is  
16 to obtain the identity of individuals who may have  
17 information. That's really the --

18           I mean, there are a couple of other things that we  
19 ask for in there.

20           But the primary purpose of most of the requests is to  
21 identify entites and individuals who can provide us with  
22 further information.

23           This is the first step in an investigation.

24           **THE COURT:** Let me -- While I've got you hear. Take  
25 me through to what you all have done with -- There's a

1 section called 501.29 which is called other supervision.  
2 And it says that you shall notify other agencies that may,  
3 in fact, have supervision requirements.

4 So when did you all notify the Florida Bar or the  
5 Supreme Court?

6 **MS. EDWARDS:** We can respond to that Your Honor.

7 **THE COURT:** Well I've got him up here. If you need a  
8 moment to talk to him.

9 But that's what I want to know is what is it that you  
10 all did to comply with that?

11 **MR. VAIL:** I would have to --

12 **THE COURT:** That's okay. Just tell me what your  
13 answer is. Because I'm curious.

14 **MS. CLARKSON:** I sent -- Excuse me, Your Honor; June  
15 Clarkson.

16 **THE COURT:** Proceed.

17 **MS. CLARKSON:** Thank you. I sent another law firm the  
18 Florida Bar and they sent it back to me on this exactly  
19 issue. They sent the entire file back to me.

20 **THE COURT:** Okay.

21 **MS. CLARKSON:** So I thought, well, am I going to do  
22 this again? And they're going to send it back?

23 **THE COURT:** Okay.

24 **MS. CLARKSON:** But I do have information and an  
25 honest belief that the Florida Bar is looking at this law

1 firm right now.

2 **THE COURT:** Okay. Then take me to Article V, Section  
3 15 of the Constitution which is kind of an interesting  
4 situation where -- Would you agree me that the Supreme  
5 Court of Florida has exclusive jurisdiction over law firms  
6 for bad behavior or misconduct?

7 **MS. CLARKSON:** I don't know that for sure. I would  
8 say, yes, that they have jurisdiction over lawyers.

9 **THE COURT:** Okay.

10 **MR. VAIL:** Excuse me, Your Honor. Let me answer that  
11 question.

12 **MS. CLARKSON:** And that's the disciplinary rules.

13 **THE COURT:** Correct. But this would be disciplinary  
14 rule type of activity, is it not?

15 **MS. CLARKSON:** To me Your Honor this is FDUPTA.

16 **THE COURT:** Okay.

17 **MS. CLARKSON:** It's not disciplinary. They do, in my  
18 opinion, violate some of the disciplinary rules in  
19 addition to statutes.

20 **THE COURT:** Okay. Fine. I didn't mean to interrupt.  
21 Go ahead.

22 **MR. VAIL:** I was just going to add, Your Honor, that  
23 the constitutional provision you referenced it says that  
24 they can regulate the practice of law and that courts have  
25 the jurisdiction to do that.

1           But behaviors of lawyers can fall within both  
2 spheres; within the Executive sphere and the Judicial  
3 sphere.

4           **THE COURT:** Okay. Well let me take you to a case that  
5 we've looking at. It's called -- And I may be  
6 mis-pronouncing it. It's Jamgochian --the record will  
7 pretend like I've said it correctly, even though I didn't  
8 -- versus Product Sell (phonetic).

9           This is a case that's referenced in the Kelly v.  
10 Palmer decision by the Special Master. I believe it's out  
11 of Delaware. And this is a really interesting case because  
12 it takes you through kind of all the cases around the  
13 country. Well, not all of them. But a large sampling of  
14 them.

15           And Delaware is really interesting because it's very  
16 similar to our state. It has a constitutional provision  
17 relative to the exclusive jurisdiction of their high court  
18 over lawyers.

19           And in that case what they said was, among other  
20 things, was that the combination of a constitutional  
21 provision which required the court to be responsible and  
22 have exclusive jurisdiction with FDUPTA that talks in  
23 terms of specific kinds of activities, that another branch  
24 of the government doesn't have the authority to even start  
25 this kind of investigative thing. It has to go through

1 the Supreme Court.

2 So tell me what you think about that particular case?

3 **MR. VAIL:** Well, Your Honor, again, we're not  
4 necessarily saying that the law firm is subject to  
5 punishment. It may be if some of these activities fall  
6 outside of the Supreme Court. Okay?

7 They are an entity with information which we believe  
8 is relevant to a potential 501 violation.

9 And the statute that we travel under authorizes us to  
10 seek information from anyone who might have information.  
11 The fact that they, themselves, contend that they can't be  
12 liable under 501 is not really relevant to whether they  
13 have to give us information that may be relevant as to  
14 someone else.

15 **THE COURT:** Okay.

16 **MR. VAIL:** And we don't know who that someone else  
17 might be until we've conducted the investigation. And  
18 that's sort of the --

19 **THE COURT:** Can I stop you for a second? I just want  
20 to ask you -- I mean, in all candor, you don't know who  
21 you think has acted in bad faith at this point?

22 **MR. VAIL:** Well, I think we have a good idea.

23 **THE COURT:** Sure. I just wanted to be sure.

24 **MR. VAIL:** But I don't want to go on the record and  
25 say.

1           **THE COURT:** I understand.

2           **MR. VAIL:** But, as I said, they are a potential  
3 witness. They're a source of information. We're  
4 authorized to go to a source of information to get  
5 evidence.

6           **THE COURT:** Okay.

7           **MR. VAIL:** And that's what we've attempted.

8           **THE COURT:** Okay.

9           **MR. VAIL:** The ultimate question of whether or not  
10 they're subject to 501 is not a question you need to  
11 answer now.

12           **THE COURT:** Okay. Okay.

13           **MR. VAIL:** I mean, if we, in fact, bring an action  
14 against them that would be the time --

15           **THE COURT:** Okay.

16           **MR. VAIL:** -- when it would be relevant. It's not  
17 ripe now.

18           **THE COURT:** All right. I appreciate that. Let me just  
19 you to wrap up if you would, please. Anything else?

20           **MR. VAIL:** Well, Your Honor, we're willing to talk  
21 about the scope of this. In our response I tried to offer  
22 some suggestions on diminishing the scope. We're  
23 sensitive to the fact that it may be burdensome.

24           All records request, I mean, are burdensome. I don't  
25 like being on the receiving end of them myself.

1           So I appreciate their concern. And we are willing to  
2 talk with them. Mr. Richman, I think, has a little  
3 overstated how things have gone on the past. And,  
4 certainly, we would be willing to sit down with them if we  
5 can proceed or work out something with them.

6           **THE COURT:** Okay. Thanks a lot Mr. Vail. I  
7 appreciate it. Thank you.

8           Mr. Richman, anything further?

9           **MR. RICHMAN:** Yes, Your Honor. First I want to  
10 respond to say I'm not overstating it.

11           We met with them the day we served our response, for  
12 hours, and said we would go ahead and do certain things on  
13 a voluntary basis. They're supposed to send us a letter  
14 reducing the categories. They never did.

15           **THE COURT:** Okay.

16           **MR. RICHMAN:** And then I called them again about a  
17 week or ten days ago to say where's your letter. And they  
18 said, oh, we didn't understand that we were supposed to  
19 send a letter. I said, well, send it and we'll work with.

20           But the point is we'll do it voluntarily. But there's  
21 no basis, no jurisdiction to be able to do it with regard  
22 to court compulsion.

23           The business about filing in the court records.  
24 That's part of a legal proceeding. That's all -- the same  
25 part of the legal proceeding. The case -- The subpoena

1           yourself, that Your Honor cited on here -- It says that  
2           the Shapiro and Fishman firm is being investigated as are  
3           the individuals. Contrary to what they're saying here.  
4           Not just as witnesses. But they're being investigated.  
5           And it's -- They say what the scope of the investigation  
6           is.

7                     What they say in a press release and what they say  
8           here in court is not what the scope is.

9                     **THE COURT:** I'm only looking at what the subpoena on  
10          its face says. I'm not considering things outside.

11                    **MR. RICHMAN:** And the other - The case -- The Kelly  
12          v. Palmer case, that obviously we rely upon and which they  
13          have made no really no effort to distinguish, the case  
14          that Your Honor cited, the Jamgochian -- the Jamgochian  
15          case --

16                    **THE COURT:** Either way, it's going to look like we  
17          said it right. Go ahead.

18                    **MR. RICHMAN:** But that says, basically, unequivocally  
19          that FDUPTA really doesn't apply to these circumstances.  
20          And it basically talks about we're bound by Florida law.

21                    So what we're really talking about here is they're  
22          looking -- They want the things that we as a law firm have  
23          with regard to our client.

24                    They can get that information from the client. They  
25          can get it from public records. There are lot of ways they



1 can get.

2 But they're intrusively invading what the law firm  
3 does. If we've done anything wrong the Florida Bar is  
4 going to go ahead and deal with it.

5 And I know Your Honor has a tight time constraint.

6 **THE COURT:** I do.

7 **MR. RICHMAN:** The only other thing that I would  
8 mention to Your Honor is on the over breadth. If Your  
9 Honor looks at the Check & Go case -- The cases they cite  
10 actually support our position with regard to over breadth.

11 So we'd respectfully ask Your Honor that the subpoena  
12 be quashed.

13 **THE COURT:** Okay. Thanks a lot. Do you have proposed  
14 orders and envelopes?

15 **MR. VAIL:** No, sir. I do not.

16 **MS. EDWARDS:** I do.

17 **THE COURT:** Why don't you leave them with me and what  
18 I'll do is my best to get you all something out. I want  
19 to go back and look at it again. But it'll probably be  
20 tomorrow before I can actually get a ruling out to you.  
21 Okay?

22 (Thereupon, the proceeding was concluded.)

23

24

25

CERTIFICATE OF COURT REPORTER

**THE STATE OF FLORIDA:**

:ss.

COUNTY OF MIAMI-DADE:

I, CHASE HILDUM, a Court Reporter in and for the State of Florida at Large, do hereby certify that I was authorized to and did report the proceedings in the above-styled cause before the Honorable JACK SCHRAMM COX, at the time and place set forth; that the foregoing pages, numbered from 1 through 26, inclusive, constitute a true and complete record of my notes.

I further certify that I am not an attorney or counsel for any of the parties, not related to any of the parties, nor financially interested in the action.

Dated this 1st day of October, 2010

\_\_\_\_\_  
Chase Hildum

Court Reporter

NBR/IMG

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<p>24:4  <b>word (1)</b> 7:24  <b>work (4)</b> 8:6 12:4                  23:5,19  <b>worked (1)</b> 10:21  <b>world (1)</b> 8:7  <b>wrap (1)</b> 22:19  <b>wrong (1)</b> 25:3</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <p><b>years (2)</b> 7:7 9:2  <b>yesterday (1)</b> 5:12</p> <hr/> <p style="text-align: center;"><b>0</b></p> <hr/> <p><b>0212146XXXXM...</b>                  1:3</p> <hr/> <p style="text-align: center;"><b>1</b></p> <hr/> <p><b>1 (1)</b> 26:10  <b>1st (1)</b> 26:17  <b>10:00 (2)</b> 1:21 5:4  <b>110 (1)</b> 2:9  <b>120 (7)</b> 15:8,8,11,12                  15:12,16 16:1  <b>15 (1)</b> 19:3  <b>15TH (1)</b> 1:1  <b>1504 (1)</b> 2:4</p> <hr/> <p style="text-align: center;"><b>2</b></p> <hr/> <p><b>2 (1)</b> 11:25  <b>2010 (4)</b> 1:3,21 5:21                  26:17  <b>2010CA021246XX...</b>                  3:15  <b>205 (1)</b> 1:19  <b>250 (1)</b> 2:4  <b>26 (1)</b> 26:11</p> <hr/> <p style="text-align: center;"><b>3</b></p> <hr/> <p><b>30th (1)</b> 1:21  <b>33301 (1)</b> 2:9  <b>33401 (2)</b> 1:19 2:4</p> <hr/> <p style="text-align: center;"><b>5</b></p> <hr/> <p><b>50 (2)</b> 1:3 3:14  <b>501 (11)</b> 11:25 12:8                  12:23,24 13:7 14:5                  15:2 17:10 21:8,12                  22:10  <b>501.205 (1)</b> 15:3  <b>501.29 (1)</b> 18:1</p> <hr/> <p style="text-align: center;"><b>6</b></p> <hr/> <p><b>6th (1)</b> 2:9</p> <hr/> <p style="text-align: center;"><b>9</b></p> <hr/> <p><b>9th (1)</b> 2:9  <b>9:30 (1)</b> 1:21  <b>9:34 (1)</b> 3:17</p>				
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