

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA.

CIVIL DIVISION

CASE NO: CACE 10-32965 (04)

THE LAW OFFICE OF DAVID STERN,

PLAINTIFF/PETITIONER

VS

FLORIDA DEPARTMENT OF LEGAL AFFAIRS,

DEFENDANT/RESPONDENT

_____/

The above-styled case came on for hearing
before the Honorable Judge Eileen M. O'Conner,
Presiding Judge at the Broward County Courthouse,
201 Southeast Sixth Street, Fort Lauderdale,
Broward County, Florida on the 12th, day of
October, 2010.

APPEARANCES:

FOR THE PLAINTIFF:

JEFFREY TEW, ESQUIRE
ANDREW B. THOMPSON, ESQUIRE
TEW CARDENAS, LLP
1441 BRICKELL AVENUE, FL 15
MIAMI, FLORIDA 33131

FOR THE DEFENDANT:

THERESA EDWARDS, AAG
JUNE CLARKSON, AAG
OFFICE OF THE ATTORNEY GENERAL
110 SE 6TH STREET, FL 10
FORT LAUDERDALE, FLORIDA 33301

EXHIBITS

DESCRIPTION

PAGE

(NONE)

ALSO PRESENT

1 Thereupon, the following proceedings were had:

2 THE COURT: We are here on the Law Office of
3 David J. Stern, P.A. versus the State of Florida
4 Department of Legal Affairs, case number
5 2010-32965. We are here on the amended
6 petitioner, the Plaintiff's Amended Petition to
7 Quash the Investigator's Subpoena Duces Tecum
8 issued by Florida's Attorney General.

9 Appearances for the record, please.

10 MR. TEW: May it please the Court, Jeffrey
11 Tew and Andrew Thompson on behalf of the
12 Petitioner, the Law Firm of David Stern, P.A.

13 THE COURT: Good morning.

14 MS. EDWARDS: Good morning, Your Honor. My
15 name is Theresa Edwards. I am appearing on behalf
16 of the Office of the Attorney General.

17 MS. CLARKSON: June Clarkson for the Attorney
18 General. Mark Briesemeister, investigator for the
19 Attorney General.

20 MR. BRIESEMEISTER: Good morning.

21 THE COURT: Spell the last name, please.

22 MR. BRIESEMEISTER: Briesemeister,
23 B-R-I-E-S-E-M-E-I-S-T-E-R.

24 THE COURT: Thank you. You may proceed, Mr.
25 Tew.

1 MR. TEW: Yes, ma'am. Your Honor, we have
2 moved to quash the subpoena on the grounds that
3 there is no factual nexus that would create an
4 action under the FDUTPA statute.

5 THE COURT: First, a copy of the subpoena
6 wasn't attached to the motion. Do you have a copy
7 of it for me?

8 MR. TEW: Yes, ma'am.

9 MS. EDWARDS: Is that the amended?

10 MR. TEW: No, that's the original. Do you
11 want me to hand up the amended?

12 THE COURT: Yes.

13 MR. TEW: Your Honor, after we filed that --

14 THE COURT: We have the amended petition.

15 MS. EDWARDS: No, not the amended petition,
16 the amended investigative subpoena.

17 THE COURT: No, you tell me if it's the right
18 one.

19 MR. TEW: This is the original, this is the
20 amended.

21 THE COURT: I don't need the original. I
22 need the one we are arguing on.

23 MR. TEW: Okay. Thank you, Judge.

24 THE COURT: So this is amended subpoena.
25 This is the first time I have seen this. You may

1 proceed.

2 MR. TEW: Yes, ma'am. Your Honor, the FDUTPA
3 statute is very precise. It requires that in
4 Section 501.204 that there have been unfair
5 methods of competition, unconscionable acts or
6 practices, and unfair or deceptive acts or
7 practices in the conduct of any trade or commerce.
8 The definition of trade or commerce is very
9 specific. It says that trade or commerce means
10 that advertising, soliciting, providing, offering,
11 or distributing whether by sale, rental, or
12 otherwise, of any good or service, or any property
13 whether tangible or intangible, or any article,
14 commodity, or thing of value wherever situated.

15 So there has to be, the alleged violator of
16 the statute has to offering, or leasing, or in
17 some sort of way exchanging goods or services with
18 the alleged person who is being mislead.

19 THE COURT: Can it be an aider or abetter of
20 that?

21 MR. TEW: No, ma'am. Well, there is no
22 allegation here. What the facts of this subpoena
23 are are very simple, the Law Firm of David Stern
24 limits it's practice to representing lenders in
25 residential foreclosures. In connection with

1 that, and sometimes they also file certain
2 documents with the Clerk. That's the sum and
3 substance of the activity that's the subject
4 matter of this subpoena. They have subpoenaed
5 records of the Law Firm relating to their
6 foreclosure practice.

7 Now, there is little authority in the State
8 of Florida, but there are two Federal cases which
9 we would like to bring to the Court's attention.
10 In the Kelly case the Court adopted a Magistrate's
11 finding. If I can hand you the pertinent portion
12 --

13 THE COURT: Is this the Judge Moreno case?

14 MR. TEW: Yes, ma'am. And the Magistrate
15 which Judge Moreno adopted first of all goes
16 through whether or not FDUTPA applies to lawyers
17 in general, and he, common sense says no, I mean
18 yes, there are certain circumstances where
19 lawyers, for example, who are doing other things
20 could be covered by FDUTPA, but as to this case
21 which involved a foreclosure law firm sending pre
22 foreclosure letters to borrowers he found the
23 essential requirement of a relationship of trade
24 and commerce between the law firm and the borrower
25 didn't exist. He also cites the Tripp (phonetic)

1 case, which is a Federal Middle District case
2 where they found the same thing.

3 So, we are not here to argue that there is a,
4 that under no circumstances can a lawyer be
5 encompassed in FDUTPA, but under the facts of this
6 case, and I don't think they are, in fact the
7 amended subpoena specifically limits the documents
8 to the foreclosure practice, and in their response
9 to our amended petition they limit this to the
10 foreclosure practice and related activities.

11 So we don't think there is any plausible set
12 of facts that can be developed that would bring
13 the activities of the Stern Law Firm within
14 FDUTPA, because even though FDUTPA has been
15 construed liberally it has always required this
16 essential requirement that one party be exchanging
17 good or services for value with the other party,
18 and foreclosure lawyers do not exchange any goods
19 or services for value from the borrower that they
20 are suing on behalf of the lender.

21 Now, the Attorney General has cited a number
22 of cases where they have concurrent jurisdiction
23 with the Florida Bar, and they have kind of set up
24 a strong hand that we are saying that under no
25 circumstances could they investigate a lawyer.

1 And the cases they cite we don't argue with. For
2 example, the Kikleiter (phonetic) case, a lawyer
3 was charged with a felony of fraud, forgery, and
4 entering a forged instrument with the client. In
5 the Hall case it was a grand theft. In the Baker
6 case it was a forgery.

7 Those were relationships between a lawyer and
8 his client, or her client, that involved the
9 violation of a, for example the grand theft
10 statute. There is no case in Florida that says
11 that a lawyer that acts in his legal capacity is
12 subject to FDUTPA.

13 THE COURT: My question to you, though, I
14 just received the subpoena, and it looks as though
15 the subpoena is not focusing on a lawyer but
16 rather the entity, the law firm. So how do you
17 address that?

18 MR. TEW: Well, because the law firm, once
19 again, they have to have some plausible theory
20 that a law firm whose lawyers practice exclusively
21 in foreclosure work in Circuit Court, that the law
22 firm is exchanging goods and services with the
23 borrower, because the alleged, quote, victim in
24 this case, are the borrowers who are being
25 foreclosed.

1 So whether it's the lawyers who work for the
2 law firm or the law firm itself FDUTPA requires
3 that the law firm be exchanging goods or services,
4 or renting them, or for value, monetary value from
5 the borrower, and that's simply not the case. The
6 borrowers in these cases have borrowed money, they
7 are being foreclosed. They don't pay anything to
8 David Stern's law firm in exchange for any
9 services or goods that David Stern Law Firm
10 supplies.

11 David Stern's services are rendered to their
12 lender clients, and they proceed in court against
13 the borrowers. So that's --

14 THE COURT: On behalf of the lender.

15 MR. TEW: Of the lender, yes, ma'am. So what
16 they have to show the Court is, to come within
17 FDUTPA, that the law firm is supplying in any
18 fashion goods or services as set out in the
19 statute to the defendant borrowers who are being
20 foreclosed, and that the borrowers are paying the
21 law firm money or something of value.

22 That's simply not, I don't think they can
23 stand here with a straight face and say that they
24 can develop any set of facts that any borrower has
25 paid anything of value to the law firm. That was

1 the point in the Judge Moreno case, and the Judge
2 Moreno case, which foreclosing lawyers don't
3 exchange any goods or services with the defendants
4 in the foreclosure. The analysis was has this
5 nexus, has this essential element of the statute
6 been met.

7 FDUTPA prohibits, when I am exchanging goods
8 or services with you and you are giving me money
9 or things of value, that I do some deceptive act,
10 or make some deceptive statement. So unless they
11 cross that threshold of showing that the law firm
12 is exchanging with the defendant in the
13 foreclosure, and I'm sure Your Honor has handled
14 many, many foreclosures, it's --

15 THE COURT: Too many.

16 MR. TEW: Too many, yes, ma'am. There is no
17 state of facts they can develop that a defendant
18 who borrowed money from a bank is paying the David
19 Stern Law Firm any money for any goods or
20 services.

21 Now, the Attorney General in his response
22 says, well, it's premature. And they cite some
23 cases where the courts have said we won't quash
24 this investigative subpoena because we don't know
25 how the facts will run out, but in those cases,

1 for example one case was a Medicare case, and the
2 statute required that there be activity in two
3 counties, and at the time of the Motion to Quash
4 the Attorney General only had evidence of one
5 county, and so the court, I think rightly, said,
6 well, the Attorney General in it's investigation
7 might develop evidence that the defendants made
8 payments, or got payments in a second county,
9 which would meet the statutory threshold.

10 But in this case, Judge, there is no
11 plausible, I don't think the Attorney General can
12 stand here with a straight face and say he is
13 going to develop evidence in his investigation
14 that a defendant in a foreclosure traded goods and
15 services for money with the Law Offices of David
16 Stern. And as broad as --

17 THE COURT: Why does it have to be that,
18 though? That's what I don't understand. Let's
19 assume for the moment that David Stern, the Law
20 Firm of David Stern is not the target of the
21 investigation. Let's assume for the moment that
22 the bank is. Can't the Attorney General go out
23 and issue a subpoena to other entities in order to
24 collect evidence against the bank?

25 MR. TEW: Well, we have to take the Attorney

1 General at his word. The Attorney General said
2 this investigative subpoena, and he put out a
3 press release, was directed to the conduct of
4 three law firms. He did not mention any of the
5 banks --

6 THE COURT: I'm not going to go by what, you
7 know, do you have a copy of the press release
8 relating to this particular --

9 MR. TEW: It's part of the original petition,
10 Your Honor. We do have a copy of that.

11 MS. EDWARDS: Your Honor, if I could just
12 object that the arguments he has made up until now
13 are not included anywhere in his initial Petition
14 to modify Or his Amended Petition to Quash.

15 THE COURT: I don't see it in the file.

16 MR. TEW: Anyway, Your Honor --

17 THE COURT: Let's assume, well, can't they,
18 can't the Attorney General issue subpoenas to
19 people that are not directly the target of their
20 investigation?

21 MR. TEW: They could, but they have chosen --

22 THE COURT: So your theory is that their
23 theory is that the law firm --

24 MR. TEW: Well, that's what the subpoena,
25 they haven't issued any other subpoenas. They

1 have it in their press release. They limit it to
2 three law firms. And they haven't mentioned that
3 this is an investigation of any banks. I will
4 tell you why. There is case law that banks are
5 subject to another agency of the State of Florida,
6 the Department of Financial Regulation.

7 There is a case, I don't have it on the tip
8 of my tongue, but there is a case which said that
9 the investigation of banks is not something that
10 the Attorney General can investigate. That's
11 delegated by statute to the Department of
12 Financial Regulation. So I don't think, I don't
13 think they are going to tell you, Judge, we are
14 investigating the banks, because I don't think
15 they have statutory authority to do it. I would
16 be happy to look for that case and supply it to
17 you, but I think that's an accurate statement.

18 This case is brought to investigate the
19 conduct of a law firm, and although they have
20 broad investigative powers unless there is this
21 statutory nexus, and I think the Moreno case
22 analyzes it in great detail, shows that law firms
23 foreclosing, doing that kind of legal work, are
24 not under FDUTPA because they are not supplying
25 goods or services to the alleged victim, which in

1 this case would be the foreclosure defendant.

2 Now, there is another argument, which we will
3 just rest on our papers, that the Florida Bar has
4 the ability to regulate lawyers. Quite frankly I
5 don't want to travel on that.

6 THE COURT: That's not your better argument.

7 MR. TEW: No, ma'am. I don't want to travel
8 on that because I think the statute, this is a
9 very simple statute, it's very focused. It's not
10 like a mail fraud statute which says any fraud
11 conducted in the mails is actionable. This
12 statute is specifically targeted to one type of
13 transaction, one person trading goods or services
14 with another, or one entity with another, and in
15 that rendering of services or selling of goods the
16 one person makes either deceptive statements or
17 does deceptive acts. It's a very focused statute,
18 and it's not a broad criminal statute where you
19 just have to have the use of the mails or
20 something like that.

21 And in this case there is no plausible
22 scenario that this investigation will lead, I
23 think maybe the test is will the investigation
24 lead to evidence that would support a charge
25 against the Law Offices of David Stern under

1 FDUTPA, and I submit to you the Attorney General
2 can not tell you a state of facts, because Your
3 Honor knows these foreclosure defendants don't pay
4 any money to David Stern's law firm in these
5 foreclosures, and it simply doesn't fit this
6 statute.

7 It's an essential nexus, it's an essential
8 fact they can't go forward unless they can show
9 Your Honor that this exchange, like Judge Moreno's
10 Magistrate which he approved, there is no exchange
11 of goods for value or services for value.

12 THE COURT: Okay. Thank you.

13 MS. EDWARDS: Good morning, Your Honor. Your
14 Honor, one thing --

15 MR. TEW: One thing, Judge. You asked about
16 the press release, we have found a copy of it.

17 MS. EDWARDS: Your Honor, as the statute,
18 which my Opposing Counsel failed to note, there is
19 a statute specifically on the investigative powers
20 of the enforcing authority, which is the Office of
21 the Attorney General, 501.206, which is in your
22 notebook there.

23 It says that if by his or her own inquiry or
24 as a result of complaints the enforcing authority
25 has reason to believe that a person has engaged in

1 or is engaging in an act or practice that violates
2 this part he or she may administer oaths and
3 affirmations, subpoena witnesses or matter, and
4 collect evidence. There is a statute right here
5 in Statute 501 that allows us to conduct
6 investigations.

7 The case law which has been provided to you,
8 Your Honor, other than 501.206 provide that at the
9 end of an investigation the Attorney General's
10 Office may say, guess what, we got nothing, and
11 that's okay. But we are entitled to go in there.
12 We are entitled to ask questions. We are entitled
13 to send out subpoenas. And we are entitled to
14 find out what's going on here.

15 When we start getting two hundred complaints
16 from around the state of Florida we are entitled.
17 That's our job, to protect consumers, to go in
18 there and try to figure out what's going on. Now,
19 my Opposing Counsel would like to argue, and would
20 wish that it was the case that they have some
21 litigation privilege that's going to protect them
22 from all the things that David J. Stern's law firm
23 is doing, however it unfortunately is not the
24 case.

25 Just from the investigation we have done so

1 far, and the sworn statements we have taken so
2 far, Your Honor --

3 THE COURT: Slow down so the Court Reporter
4 can take it down.

5 MS. EDWARDS: Just from what we have taken so
6 far, Your Honor, we have found substantial
7 egregious activities that appear to have taken
8 place in David J. Stern's law firm. He is the
9 president of that law firm. He controls
10 everything that goes on in it.

11 Now, with your permission I would like to put
12 on some testimony from my investigator to
13 establish that we have an ongoing investigation.
14 With an ongoing investigation, as you know, Your
15 Honor, the role which the Court plays under those
16 circumstances is to look at the subpoena and say
17 is the subpoena unreasonable, is it oppressive, is
18 it overbearing, and if it is I can restrict it.

19 In their first motion they didn't even ask to
20 quash it, they asked you to restrict it from five
21 years to three years, they said they wanted to
22 make attorney client privilege issues. That's
23 what was in the first motion they brought before
24 you. And then when the West Palm Beach Judge
25 ruled that, oh, yes, the Florida Bar has control

1 over law firms, then they hurried up and filed an
2 amended petition saying, oh, well, now we are
3 going to say that there is no authority for the
4 Attorney General to go after a law firm, which
5 after looking at the Motion for Re Hearing and the
6 affidavit which was submitted from the Florida Bar
7 hopefully the Court will be persuaded to realize
8 that was perhaps not a good choice.

9 THE COURT: The Plaintiff's main argument is
10 that there is no basis for an investigation of the
11 law firm under FDUTPA. Do you want to address
12 that?

13 MS. EDWARDS: Yes. The problem that they
14 have with that is it's our office who gets to make
15 that decision. It is our office that is able to
16 bring in our investigator to say after we receive
17 two hundred complaints, and numerous complaints
18 throughout the state of Florida, it is our job as
19 protectors of the consumers to go out there and do
20 an investigation. It's not for them to tell us
21 how we are going to do our investigation.

22 As the case law says it's our job to go out
23 there and try to get the information from the
24 people that don't want to give it to us. That's
25 how we find out what's going on there. And in the

1 end there may be nothing wrong, but that's not
2 what we see so far, and we are certainly entitled
3 to go forward. In fact they have already given us
4 a box of documents, because it appears clear that
5 they didn't realize that they had some objection
6 to producing documents until after the West Palm
7 Beach ruling. Before they thought they should
8 produce documents but only the ones they wanted to
9 produce.

10 But if you will allow testimony to establish
11 our investigation is ongoing, it is in good faith,
12 it is in progress, that I think the Court's ruling
13 will need to be either that the subpoena at most
14 would restricted some way. But certainly we are
15 entitled to conduct our investigation based on
16 what we have discovered so far.

17 THE COURT: Make it brief.

18 (Thereupon, the witness is sworn in.)

19 MR. TEW: Your Honor, let me note my
20 objection to this. We haven't been apprised of a
21 witness, but --

22
23 THE COURT: I don't know that it's all that
24 terribly important anyway. I don't know if it's
25 going to help in any shape, manner, or form. Tell

1 us your full name.

2 MR. BRIESEMEISTER: Good morning, Your Honor.

3 Mark Briesemeister.

4 THE COURT: You may proceed.

5 DIRECT EXAMINATION

6 BY MS. EDWARDS:

7 Q Can you please tell the Court where you are
8 employed?

9 A The Office of the Attorney General Economic
10 Crimes Division here in Fort Lauderdale.

11 Q And what is your position there?

12 A Investigator.

13 Q And what are your duties?

14 A To investigate violations, and possible
15 violations, primarily of Florida Statute 501.

16 Q And have you been assigned to an
17 investigation regarding the David J. Stern Law Firm?

18 A Yes, I have.

19 Q And who assigned you?

20 A The Bureau Chief Robert Gulian (phonetic).

21 Q And as a result of that assignment have you
22 become involved in the investigation?

23 A I have.

24 Q And is it ongoing?

25 A It is.

1 Q And does it involve complaints from only the
2 County of Broward?

3 A No, counties all over the state of Florida.

4 Q And can you tell the Judge essentially what
5 you do in pursuing your investigation?

6 A A number of things, including the issuance of
7 subpoenas for records and information. We conduct
8 interviews, take depositions.

9 Q Have you attended any sworn statements that
10 have been taken?

11 A Yes, I have.

12 Q And have you heard sworn statements talking
13 about the activities that take place in the Law Firm of
14 David Stern?

15 A I have.

16 Q And have you heard sworn testimony regarding
17 forgeries and fraudulent documents prepared in that law
18 firm?

19 A Yes, I have.

20 Q And have you heard people describing the
21 preparation and recording in the public records of
22 Broward County and many other counties around the state
23 of Florida of assignments of mortgage after the
24 foreclosures were filed?

25 A Yes, I have.

1 Q What is the current status of the
2 investigation?

3 A I wouldn't characterize it as in preliminary
4 stages. As of yesterday we received approximately one
5 hundred sworn affidavits in addition to a number of
6 complaints. The complaints originate actually back
7 several years, as much as five years ago.

8 Q And when you receive the complaints what do
9 you do with the information that you receive?

10 A I follow up on those complaints. We will
11 forward out an affidavit for the consumer to complete
12 and have Notarized, and forward back this office for
13 review.

14 Q And are you in the process of receiving those
15 now?

16 A We are.

17 Q Has there been other documentation received
18 in large quantity?

19 A Yes.

20 Q And have there been documents sent from
21 around the state of Florida from every county, lawyers
22 from every county in Florida?

23 A From many, many counties all over the state.

24 **MS. EDWARDS: I don't have any other**
25 **questions.**

1 THE COURT: Do you have any cross?

2 MR. TEW: Yes, ma'am.

3 THE COURT: Go ahead.

4 CROSS EXAMINATION

5 BY MR. TEW:

6 Q Did you bring any of these statements to
7 court with you today?

8 A I did not.

9 Q Why not?

10 A I was advised by Counsel at this point not to
11 bring them in. However, I do have a summary sheet of
12 every affidavit we have received as of yesterday.

13 Q Alright. So you are testifying about things
14 to the Judge that you didn't bring any supporting
15 statements?

16 A I did not bring the actual documents.

17 Q On instructions of the Attorney General's
18 staff?

19 A I asked if I should and I was told it was not
20 necessary at this point.

21 Q Alright. Any of the statements that you have
22 taken or seen, have any of the persons giving the
23 statements said that the Law Offices of David Stern
24 advertised their services to any person who had
25 borrowed money from a bank?

1 **A** Not to my knowledge at this point.

2 **Q** Have any of the statements that you have seen
3 said that David Stern's law office solicited anything
4 of value from any person who had borrowed money from a
5 bank who is in foreclosure?

6 **A** I don't believe so.

7 **Q** Had in any of the statements a person said
8 that the Law Offices of David Stern sold or rented any
9 good, service, or property to any person who had
10 borrowed money from a bank and is now in foreclosure?

11 **MS. EDWARDS:** I object, that's completely
12 **irrelevant.**

13 **THE COURT:** Overruled.

14 **BY MR. TEW:**

15 **Q** Go ahead.

16 **A** Not that I'm aware of.

17 **MR. TEW:** Nothing further, Judge.

18 **THE COURT:** Alright. Do you have anything
19 **else?**

20 **MS. EDWARDS:** Nothing else. Thank you.

21 **THE COURT:** You may sit down, sir. Anything
22 **else?**

23 **MS. EDWARDS:** No, Your Honor, just to
24 emphasize that, again, the Florida Statute 501.206
25 and the cases that interpret it that have been

1 provided are primarily Federal cases, and as you
2 know Florida Statute 501 suggests that the Court
3 will rely on those Federal cases because there is
4 little in the way of State cases on this issue.

5 The case law is quite broad, which allows
6 that investigations be taken place by our agency,
7 the same as other agencies that are authorized by
8 the State to conduct investigations. It does not
9 mean that we need to know that there is something
10 wrong. I means it needs to only be that we have
11 some concerns, that there might be someone
12 possibly breaching 501.

13 And if that's the case we are authorized as a
14 consumer protection agency to do an investigation.
15 That is what we are doing, Your Honor, and that is
16 what we are entitled to do. I would ask the Court
17 deny the amended petition, or that at the most the
18 Court restrict it in some way as they initially
19 requested. Thank you.

20 THE COURT: Alright. And there is no dispute
21 then that it's the law firm itself is what's under
22 investigation?

23 MS. EDWARDS: Well, Your Honor, this is quite
24 a broadening investigation, as it turns out. This
25 is one of the places that are being subject,

1 however, for our investigation to go forward it
2 doesn't really matter if it's the law firm. We
3 are entitled to conduct an investigation, Your
4 Honor. It may be the law firm. It may be people
5 within the law firm. It may be other agencies, or
6 other entities. We are entitled as an agency of
7 the government to conduct that investigation.
8 Thank you.

9 MR. TEW: Two things, Judge, I don't believe
10 there is any case that says the Attorney General
11 is above the law, and that you have no ability to
12 restrain his over reach. Secondly, the Community
13 Health Care case which they cite I think is the
14 best one. In that case, that was the one where to
15 trigger the statute they had to have two counties,
16 and the agency in that case showed the Court that
17 there was a plausible set of facts that could be
18 discovered that would trigger the statute, meaning
19 more than one county.

20 In this case I think it's laughable for them
21 to contend to Your Honor, particularly in light of
22 their investigator who has read hundreds of
23 statements, that the Law Firm of David Stern or
24 any of the lawyers engaged in trade or commerce,
25 meaning the exchange of goods or services for

1 money with anybody who is being foreclosed.

2 I think they at least have to offer you,
3 which they can not do, some state of facts which
4 are plausible which could put this investigation
5 under FDUTPA. FDUTPA says, in it's investigation
6 clause it says they can investigate violations of
7 the statute of this chapter, words to that effect.
8 So I think at a threshold they have to make some
9 showing, otherwise they are the grand inquisitor,
10 the Attorney General can investigate anybody for
11 anything even though he can't articulate how it
12 could possibly be under that statute.

13 I don't think the statute when you read it,
14 when it says can investigate violations of this
15 chapter, it means he can investigate anything
16 whether it could conceivably be a violation or not
17 and Circuit Judges have no ability to restrain
18 that over reach and that misconduct by the
19 Attorney General. Respectfully, Judge, you should
20 quash it.

21 By the way, their amended petition already
22 exceeds the points we made initially. They have
23 changed the time period, things like that, so they
24 have already admitted that the first subpoena was
25 over broad. Now we are asking you, and by the

1 way, we did produce documents trying to cooperate.
2 We produced all the documents we had that were
3 relevant to the foreclosure hoping that the
4 Attorney General would see that there wasn't any
5 case here. They have persevered, and we are
6 asking you now --

7 THE COURT: How many boxes did you produce?

8 MR. TEW: Twenty five thousand documents.

9 And they have yet to point to one --

10 THE COURT: One box.

11 MR. TEW: Well, it was a disc with twenty
12 five thousand documents, pages. They have yet to
13 point out to Your Honor any document they have
14 discovered that would trigger the nexus of trade
15 or commerce. And they haven't pointed to any
16 statement where, if they were in good faith about
17 this they would have found a statement where some
18 defendant in a foreclosure said I paid or traded
19 things of value with the law firm or some lawyer
20 and therefore I am a deceived consumer.

21 It's strictly not possible, and I think Your
22 Honor can restrain them, and quash the subpoena.

23 THE COURT: You are done, right?

24 MS. EDWARDS: Well, I can keep talking.

25 THE COURT: Anything new though?

1 MS. EDWARDS: Well, just in response to what
2 he said about Community Health Care, I mean he
3 wants to talk about it being laughable, actually
4 Community Health Care says that because you are
5 involved in an investigation until the
6 investigation is done we don't know what's going
7 to happen. Which is exactly what I was telling
8 the Court earlier, that we are entitled to do an
9 investigation, maybe we will find something not
10 wrong. But surprisingly the documents they
11 produced did not include the documents that we had
12 the most concern about and wanted to get a hold
13 of, which from what we are seeing so far may
14 involve kick backs to the servicers who are hiring
15 them, which surprisingly weren't included in the
16 documents. So that's why we want to keep looking.

17 THE COURT: Alright. Thank you very much. I
18 will issue an order in a couple of days.

19 (Thereupon, the hearing concluded.)
20
21
22
23
24
25

CERTIFICATE

STATE OF FLORIDA)
) SS.
 COUNTY OF BROWARD)

I, ROBIN VASQUEZ, A NOTARY PUBLIC AND
 REPORTER OF THE STATE OF FLORIDA, DO HEREBY
 CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE
 TRANSCRIPT OF THE HEARING AS REPORTED BY AND
 BEFORE ME AT THE TIME, PLACE AND THE DATE HEREIN
 BEFORE FORTH.

I DO FURTHER CERTIFY THAT I AM NEITHER A
 RELATIVE NOR EMPLOYEE NOR ATTORNEY NOR COUNSEL OF
 ANY OF THE PARTIES TO THIS ACTION, AND THAT I AM
 NEITHER A RELATIVE NOR EMPLOYEE OF SUCH ATTORNEY
 OR COUNSEL, AND THAT I AM NOT FINANCIALLY
 INTERESTED IN THE ACTION.

WITNESS MY HAND AND OFFICIAL SEAL IN THE CITY
 OF FORT LAUDERDALE, COUNTY OF BROWARD, STATE OF
 FLORIDA, THIS 2ND, DAY OF NOVEMBER, 2010.

BY: _____
 ROBIN VASQUEZ
 REPORTER

TIC/DB

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