

KEVIN POTEPA, 7/11/2019

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(None.)

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(None.)

RECESSES TAKEN

Recess taken from 10:26 a.m. to 10:32 a.m.

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1 DEPOSITION OF KEVIN POTEPA, commenced at
2 9:05 a.m. on July 11, 2019, at the law offices of
3 Coppersmith Brockelman, PLC, 2800 North Central Avenue,
4 Suite 1900, Phoenix, Arizona, before KELLY SUE OGLESBY, a
5 Certified Reporter, CR No. 50178, in and for the County of
6 Maricopa, State of Arizona, pursuant to the Rules of Civil
7 Procedure.

8 * * *

9 APPEARANCES

10 FOR PLAINTIFF:

11 OSBORN MALEDON, P.A.
12 BY: MR. GEOFFREY M.T. STURR
13 2929 North Central Avenue
14 21st Floor
15 Phoenix, Arizona 85012-2793
16 gsturr@omlaw.com

17 FOR DEFENDANTS:

18 COPPERSMITH BROCKELMAN, PLC
19 BY: MS. VIDULA U. PATKI
20 2800 North Central Avenue
21 Suite 1900
22 Phoenix, Arizona 85004
23 vpatki@cblawyers.com
24
25

KEVIN POTEPA, 7/11/2019

Phoenix, Arizona
July 11, 2019
9:05 a.m.

* * *

KEVIN POTEPA,

called as a witness herein, having been first duly sworn,
was examined and testified as follows:

EXAMINATION

Q. (BY MS. PATKI) Hi, Mr. Potempa. My name is
Vidula Patki. We met off the record and we have just been
chatting a little bit prior to your deposition.

Can you just state your name and date of birth
for the record.

A. Kevin Potempa. Date of birth i [REDACTED]

Q. And how would you like me to address you here
today?

A. Kevin is fine.

Q. Okay. We covered the ground rules off the
record, but just quickly to reiterate, all answers must be
verbal. To the extent you can, no uh-uhs or uh-huhs.

To the extent we can, let's try to not talk over
one another. If you don't understand my question, just
ask me to rephrase it and I'll try. The flip side of that
is if you answer a question, I'm going to assume you

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1 understood it.

2 And if you need a break, we can break whenever
3 you like. We have generally been breaking every hour as a
4 matter of practice, but if everyone is doing okay, we can
5 skip the break. If you need a break at any time, just let
6 me know.

7 A. Okay.

8 Q. And, you know, I will ask you to finish
9 answering the question, if a question is pending, but
10 otherwise, I don't see any problem with us breaking
11 whenever you would like.

12 At times you may hear Geoff here object, or if
13 Geoff asks you a question, I may object. Let us get our
14 objection on the record, but then you can go ahead and
15 answer the question thereafter, if you can.

16 At any point in the deposition if you feel like
17 you need to correct a prior answer, feel free to do that.

18 A. Okay.

19 Q. That's not a problem.

20 You stated off the record that you had never
21 given a deposition previously, correct?

22 A. Uh-huh.

23 Q. Is there any reason today why you would be
24 unable to give accurate and truthful testimony?

25 A. No, not at all.

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1 Q. And you understand you are testifying under
2 oath?

3 A. Correct.

4 Q. You are being deposed with regards to a lawsuit
5 titled Peter S. Davis v. Clark Hill.

6 Do you have any understand as to what this
7 lawsuit is about?

8 A. Only because of the letter that you have sent.

9 Q. Okay. Other than that, you are unfamiliar with
10 this lawsuit?

11 A. Between the two parties?

12 Q. Yes.

13 A. No, I'm not familiar with it.

14 Q. Okay.

15 A. If I can just ask a question, though.

16 Q. Yes.

17 A. You had said that you break every hour and you
18 had asked if I wanted water. Has it been past an hour
19 these, generally?

20 Q. Some have.

21 A. Then maybe I will take a water.

22 MS. PATKI: Okay. Can we go off the record.

23 (An off-the-record discussion.)

24 THE WITNESS: So getting back to your question,
25 you had asked if I was familiar with this lawsuit --

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1 Q. Yes.

2 A. -- in particular, the one that I'm here for.

3 Q. Yes.

4 A. No, I'm not.

5 Q. Okay. Did you do anything to prepare for this
6 deposition today?

7 A. No.

8 Q. Okay. Just so we can get a better idea of your
9 background, and we talked a little bit about it off the
10 record, can you tell us where you grew up and
11 circumstances that brought you to Arizona?

12 A. Yeah. About 21 years ago, in '97, my wife and I
13 woke up in Chicago and it was minus 40 with the windchill
14 and we said, "what are we doing here?"

15 We opened up the map and looked for a place with
16 warmer weather and no humidity, and that just left maybe
17 two or three choices, and we narrowed it down to the
18 Phoenix area and we came that next year.

19 Q. And have you lived in Phoenix since that time?

20 A. The Phoenix area.

21 Q. Phoenix area.

22 A. It's always been -- when we first moved here, it
23 was Fountain Hills, and then we have pretty much been in
24 the Scottsdale area the rest of the time.

25 Q. And I'm sorry. The year you said you moved here

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1 was '97?

2 A. '97.

3 Q. And you had mentioned off the record that you
4 grew up in the suburbs of Chicago.

5 A. Right.

6 Q. After high school, did you attend college?

7 A. No, I did not. I started working right away for
8 a transportation company.

9 Q. Okay. And just in a narrative general fashion,
10 can you give me your work history since the time you
11 graduated from high school? And if I have any specific
12 questions, I'll follow up.

13 A. Okay. So after high school I started working
14 for a transportation company, and I pretty much stayed in
15 that industry for the next 20 years.

16 Q. I see.

17 A. And left, I think, that industry in like '95.

18 Q. Okay.

19 A. And then had a small business for a couple of
20 years from '95 to '97, and then decided to move here.

21 Q. And what was that small business?

22 A. It was a pressure cleaning company. It was a
23 cleaning, building restoration company.

24 Q. Okay. And when you moved to Phoenix, what
25 did -- what is it that you did for work?

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1 A. Moved without a job and moved without a
2 business. So we were looking to try and find another
3 small business --

4 Q. Uh-huh.

5 A. -- so that's when I decided to be a business
6 broker so that I would have maybe early access to new
7 businesses that were for sale, or ones that were
8 successful so I knew where to maybe go with employment --

9 Q. Right.

10 A. -- and which business to maybe start.

11 Q. Okay. And so as a business broker -- off the
12 record we were talking about now you and your wife have a
13 car dealership that specializes --

14 A. Right.

15 Q. -- in hybrid cars.

16 A. Right.

17 Q. Between 1997 when you began as a business broker
18 and today, have you had multiple different businesses?

19 A. Yes, small ones. Very small. In '97 when I
20 came here, I went through the real estate school, which
21 was required. You were required to have a license to be a
22 business broker with a real estate license, because
23 oftentimes you were selling a business that had property.

24 Q. I see.

25 A. So you were required -- even though you weren't

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1 really using the license in any way, if you were listing a
2 business that also had property as part of the sale, then
3 you needed to be a licensed agent.

4 Q. I see.

5 A. I only did the business brokerage for about, I
6 think, nine months --

7 Q. Okay.

8 A. -- because it -- it was 100 percent commission
9 and I didn't like that situation. I seemed to -- I'm a
10 hard worker and it didn't seem to pan out for the
11 consistency of income that I wanted.

12 Q. Okay. And so then after the business brokerage,
13 what did you do after that?

14 A. I did -- I did meet somebody that was selling a
15 small -- I wouldn't say selling a small -- was looking for
16 a partner --

17 Q. Uh-huh.

18 A. -- to be a part of a golf product, and I was
19 kind of an avid golfer growing up. And I ended up being
20 partners with him for about a year, and that didn't work
21 out. It wasn't like I thought it was going to be, and he
22 still had more control over the product than I did because
23 he was always the manufacturer.

24 Q. I see.

25 A. So I did that for about, oh, probably about a

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1 year. And then because of those two businesses not being
2 really successful, the business brokerage and the golf
3 product, I -- I knew so much about transportation, it was
4 easy for me to get back into it and get a job.

5 Q. Uh-huh.

6 A. So I went back into transportation for about
7 three years, I think.

8 Q. And what is it that you did in the
9 transportation industry?

10 A. Management and sales.

11 Q. Okay. Of like a transportation company?

12 A. Yeah, a trucking company.

13 Q. And so at some point you became involved in the
14 real estate industry here in Arizona, correct?

15 A. Right.

16 Q. When did that happen?

17 A. Right around 2004 I was looking to -- I was
18 seeing a lot of seminars about real estate and the
19 potential to make good money in that business, so I went
20 to a couple classes. I think it was 2004. Went to a
21 couple seminars, some of them were like three days, some
22 of them were like a week long, and I learned a lot about
23 being an investor and how to flip houses. That's when it
24 started, as far as real estate went.

25 Q. Okay. And so after you attend -- let me back

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1 up. How long were you in the real estate industry in some
2 capacity?

3 A. 2004 to probably 2013.

4 Q. Okay. And between 2004 and 2013, were you
5 buying residential properties and flipping them?

6 A. Yeah. So in 2004, when I went through those
7 seminars, one of the first things that they shared with
8 everyone was how to acquire properties.

9 Q. Uh-huh.

10 A. And one of the avenues was through the trustee
11 sale, to buy properties at the trustee sale.

12 Q. Uh-huh.

13 A. So we started doing that. I shouldn't say --
14 let me back up for a second and say that we -- one of the
15 parts of that process is to know how to find properties,
16 know how to finance properties, know how to fix them up,
17 know how to sell them.

18 So in 2004, there is a guy named John Ray that
19 was running a business that was -- that would send you the
20 list of what was going the next day at the trustee sale.

21 Q. Uh-huh.

22 A. And the next part of the equation was that if
23 you did win a property and you were the highest bidder,
24 then somebody had to be there to have money to loan to
25 you.

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1 Q. Right.

2 A. And that's how I met Denny from DenSco, because
3 Denny was the hard-money lender that John Ray referred
4 people to.

5 Q. Okay.

6 A. So from 2004 to probably when the crash
7 happened --

8 Q. Uh-huh.

9 A. -- which I think --

10 Q. '08.

11 A. -- yeah, '08, '09, we probably, I don't know,
12 probably maybe seven houses a year. I mean, we weren't as
13 big as -- it was just my wife and I, so we weren't as big
14 as some of the other people were in the industry.

15 Q. Uh-huh.

16 A. Because we -- we didn't want to have employees.
17 We didn't want to grow it to the point where it became
18 this big problem with us. We liked having small
19 businesses, because it gave us freedom of time, so we
20 didn't want to get bogged down with a bunch of employees
21 and that, so we tried -- we always were small.

22 Q. I see.

23 A. And we would do five, I mean, six, seven houses
24 a year. And then when the crash happened, that really
25 hurt us --

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1 Q. Uh-huh.

2 A. -- personally.

3 Q. Right.

4 A. Because we had money in our home, we had a lot
5 of equity in our home at the time, but then when the crash
6 happened, like most people, we lost it.

7 Q. Uh-huh.

8 A. And that was very hard for my wife and I and our
9 family. We -- we lost a lot of money. We lost a lot of
10 equity. We had to move. So that was a lasting effect,
11 that we really questioned whether we ever wanted to do it
12 again.

13 Q. Uh-huh.

14 A. So I think what ended up happening was we found
15 that after that, we found that properties at the trustee
16 sale were cheap, because there was so many of them.

17 Q. Uh-huh.

18 A. We -- we were still only buying a couple of
19 them, but we would use them as -- it was so hard, there
20 were so many properties on the market, it was hard to flip
21 a property --

22 Q. Uh-huh.

23 A. -- because inventory was readily available for
24 anyone, so to compete against so much inventory was hard.
25 So basically we bought a couple small houses that we were

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1 able to put tenants in and we had them as rentals for like
2 a year.

3 And then we noticed how quickly it came back
4 price-wise, and we were so afraid of hanging on to them
5 too long, like we did with the ones before the crash, that
6 we said, okay, they are -- you know, it looks like we are
7 going to make some good money on these houses. Let's just
8 sell them and get out of this industry --

9 Q. Uh-huh.

10 A. -- which is what we did.

11 So my wife and I were so hurt by what happened,
12 that we didn't want it to happen again, so we decided that
13 we would just sell off those couple rental houses that we
14 had, get out of -- try and get out of the industry and do
15 something else.

16 Q. I see.

17 A. So that would have been right around 2011, 2012,
18 something like that.

19 Q. Okay. And then you had mentioned previously
20 that you don't think you actually exited the real estate
21 industry until 2013.

22 Did you do something for another year or two
23 thereafter?

24 A. Yeah. So what we ended up doing was we -- we
25 had bought a personal residence --

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1 Q. Uh-huh.

2 A. -- that needed a lot of work.

3 Q. Okay.

4 A. And it was a great deal. So since it was a
5 personal residence that we were also living in, it was
6 less of a risk we felt. We didn't want to get into
7 flipping houses, but if we were working on our own home
8 that we had to live in, there was less of a risk.

9 Q. Uh-huh.

10 A. So we did rebuild a home that we were living in,
11 and we were in it for the two-year period that you needed
12 to, to not pay the capital gains tax. So after the two
13 years, we sold that house.

14 And that was our last, really our last -- well,
15 I shouldn't say our last fix-up, but it was our personal
16 residence, so I don't think that we did another home that
17 was not ours --

18 Q. Uh-huh.

19 A. -- after 2012.

20 Q. Okay. You had mentioned earlier that you met
21 Denny Chittick through a referral from John Ray --

22 A. Right.

23 Q. -- is that correct?

24 A. Uh-huh.

25 Q. Do you remember the year that happened?

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1 A. Uh-huh. It was at the same -- it was the same
2 time that we had taken those classes, because that was the
3 next step. You took the classes, then you started to
4 actually physically start doing what you learned.

5 Q. Right.

6 A. So that was right around 2004, during 2004, I
7 believe it was. Because if I remember correctly, I think
8 we started doing this -- taking, going to the seminars in
9 2003 and early 2004, and then during 2004 was when John
10 had introduced me to Denny.

11 Q. Okay. And so did you know John before you met
12 Denny?

13 A. Yes. Because when you left the seminar, the
14 next step was to try and find who you can work with to
15 give you access to information at the trustee sale.

16 Q. Right.

17 A. So I think we did a search and John Ray's
18 company was one of the companies. Buy AZ was another big
19 company that was doing it.

20 Q. Uh-huh.

21 A. And basically what it was was a company that
22 would put together the list of what was going at the
23 auction the next day, and send it to you the day before so
24 that you can look at it that evening, maybe go drive by
25 some houses that evening, maybe drive by houses early in

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1 the morning, to see ones that you might be interested in
2 bidding on that day.

3 Q. Right.

4 A. So it was a bidding company. It was like a
5 bidding source. So you didn't have to physically go to
6 the trustee sale.

7 Q. Yes.

8 A. John Ray or somebody that worked for John Ray
9 would sit there, and you would text the property that you
10 were interested in and what your bid would be, and then he
11 would bid. And if you got it, then the next step was to
12 get hard-money lending so that you can get that home.

13 Q. Okay. But you did not have a personal
14 relationship with John Ray --

15 A. No, not at all.

16 Q. -- prior to him --

17 A. No.

18 Q. -- recommending Denny?

19 A. No. Never knew him before.

20 Q. Okay. What do you remember about that first
21 introduction with Denny?

22 A. Well, it wasn't a personal or physical
23 introduction. It was, I -- I think the first few homes we
24 never even met physically.

25 Q. Uh-huh.

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1 A. It was just John saying: Hey, give this guy a
2 call. He is our hard-money lender. He will set up -- you
3 know, they had been working apparently for a long time.

4 Q. Uh-huh.

5 A. So they knew how to set up, and it was a daily
6 thing for them to work together.

7 Q. Uh-huh.

8 A. So when we finally won a home at the auction,
9 the next step was to give Denny a call and say this is
10 what we -- this is, you know, who we are and we bought
11 this home through John Ray's bidding service and we need a
12 hard-money loan.

13 So I think the first, probably the first, maybe
14 even the first year, I think, we never met each other
15 physically.

16 Q. I see.

17 A. It was just -- and I guess that's -- I mean,
18 it's pretty common --

19 Q. Uh-huh.

20 A. -- because there was really no reason to.

21 Q. Right.

22 A. It was just moving or wiring money, and it
23 wasn't really a need for it.

24 Q. Right.

25 A. And he would, like, email the documents and --

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1 if I recall, and then we would sign the documents at John
2 Ray's office. Because -- oh, that's right. Because I
3 think his wife at the time worked for John Ray.

4 Q. "His wife" being Denny Chittick's wife?

5 A. Yes.

6 Q. Okay.

7 A. So John Ray employed Denny's wife, so when you
8 bought a home, you would go to John Ray's office --

9 Q. Uh-huh.

10 A. -- and she did all the paperwork. So you went
11 in with your part of -- usually you had to come in with
12 like 15 percent of what you were borrowing --

13 Q. Okay.

14 A. -- or whatever it was, 10, 15. So you would
15 come in with a cashier's check and bring it to John Ray's
16 office. And Denny's wife worked for John Ray so she would
17 already have the paperwork all done, and she was a notary,
18 too, so we would go in and that's where we would do the
19 transaction.

20 Q. I know this was now a long time ago, but in
21 those early transactions that you had with Denny, when you
22 would contact him and say we purchased a home, I need X,
23 were you required to send Denny any documentation
24 regarding the property?

25 A. In what -- what do you mean by documentation?

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1 Q. Well, so Denny represented to his investors that
2 his portfolio generally would attempt to keep a
3 loan-to-value ratio of 70 percent.

4 A. Okay.

5 Q. So my question is, do you know if Denny would do
6 anything to ensure that he was compliant with that
7 loan-to-value ratio?

8 A. He did that. He did his own analysis on that
9 property.

10 Q. Okay.

11 A. And he would say: Okay. What's the address?
12 You know: what did you get it for? And then he would do
13 something in his computer and come back and say: This is
14 the -- this is what I'm going to need you to come in with
15 and this is what I'll loan you on the property.

16 Q. And when you say "come in with," that means the
17 amount that you would need to --

18 A. Right.

19 Q. -- kick in?

20 A. Right.

21 Q. Okay. So was there ever -- if I'm hearing you
22 correctly, there would be times where you would approach
23 Denny and say: I need X --

24 A. Uh-huh.

25 Q. -- and he would come back to you and say: well,

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1 I'm only going to give you Y.

2 MR. STURR: Object to the form.

3 Q. You can answer.

4 A. Pardon me? I didn't hear what he said. I'm
5 sorry.

6 Q. He just said object to the form. That was --

7 A. Oh, okay.

8 Q. Yeah. So you can go ahead and answer the
9 question.

10 A. Oh, okay.

11 There were times where we thought maybe the
12 property was worth more, and when he looked at it maybe he
13 thought it was worth a little less.

14 Q. Uh-huh.

15 A. Not often, you know. Maybe 10 percent of the
16 time that that would happen.

17 Q. And in those situations where there was a
18 discrepancy in your valuations, would he only loan you the
19 amount that comported with his valuation?

20 A. It would depend. Like if we -- since we had
21 access to the MLS as a realtor, we would -- the whole
22 reason why maybe we bid on that property was because we
23 thought the value was this, and we felt comfortable
24 bidding to a certain number based on what we thought the
25 value of the property was.

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1 Q. Uh-huh.

2 A. So if there was a large discrepancy between what
3 we thought the value of the property was and what he
4 showed the value of the property was, then there would be,
5 like, a conversation about it. He might say: well, you
6 know, these three addresses are the three comparables that
7 I'm using. And I might say: well, these are the three
8 that I'm using --

9 Q. Uh-huh.

10 A. -- because they are closer logistically to the
11 property or geographically to the property, so I think
12 that these are better comparables to use. Or it might be
13 that all of our comparables were in the same subdivision
14 and his was in the subdivision next door --

15 Q. Uh-huh.

16 A. -- which we thought was just totally a different
17 subdivision setup so we thought the values weren't the
18 same, comparably.

19 Q. Right.

20 A. So, you know, conversations like that would come
21 up. And very rare that they would come up, though,
22 because with what -- we were very conservative on what we
23 bid on, and we lost way too many houses because we were
24 too conservative not going higher.

25 Q. I see.

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1 A. So we knew that when we got a house, that there
2 was enough cushion there that it made sense. So it was
3 very rare that we would ever have a need for that
4 conversation.

5 Q. So other than the, I think you said, 10 percent,
6 and I understand that's just an estimate --

7 A. Right.

8 Q. -- the 10 percent of the time there would be
9 this discrepancy, you would ask for a certain amount and
10 you found that Denny would loan you that amount?

11 A. Right.

12 Q. Okay.

13 (Deposition Exhibit No. 1033 was marked for
14 identification.)

15 Q. So I'm handing you an email exchange between
16 what appears to be you and Denny in 2011.

17 A. Uh-huh.

18 Q. And you will see at the bottom, you say,
19 "Denny," you identify the property address and I'm
20 assuming the parcel number. Purchase 80k. I would like
21 60k. I will probably have you wire direct to this title
22 company first thing wednesday morning. You can do the
23 docs the day before.

24 A. Okay.

25 Q. And then Denny responds to you and you are, you

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1 know, basically exchanging information to facilitate --

2 A. Uh-huh.

3 Q. -- the loan.

4 was this -- does this or is this email
5 representative of typically how you and Denny would talk
6 about the properties and the loans that you needed?

7 A. Yes and no. And let me -- let me say why.
8 Sometimes you would buy properties at the trustee sale so
9 you didn't have this luxury of time.

10 Q. Uh-huh.

11 A. Sometimes you would buy properties off the MLS
12 so you had plenty of time. You know, you had a closing
13 that was maybe two, three weeks down the road, so you were
14 able to have luxury of time.

15 Q. Uh-huh.

16 A. And there were times where, like, he would
17 have -- he would have a lot of money still to loan out,
18 and so there was times where you would be able to get more
19 in those situations because he was able to loan more out.
20 He was cash heavy and he didn't like holding on to money
21 because it wasn't making him money.

22 Q. Uh-huh.

23 A. So, you know, there were times where -- and this
24 is in 2011, so this was after seven years --

25 Q. Uh-huh.

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1 A. -- of doing business with him.

2 Q. Right.

3 A. So, you know, over time that changed a little
4 bit, too, because he -- he would know that I would be a
5 reputable borrower, so to speak, so this would not have
6 happened probably in the first couple years.

7 Q. Okay.

8 A. Because there was a level of competency and
9 trust that was eventually developed to where, after seven
10 years of doing business and never being late on a payment
11 and never, you know, having a house foreclosed on or
12 giving him one back, like other, I think, investors did, I
13 guess. So there was a level of trust there, so
14 oftentimes, you know, on the last couple, he may have
15 said, you know: well, how much do you need on that one?
16 I'm cash heavy. I've got a ton of money. So it's just
17 sitting here.

18 And when money sits -- he always used to say
19 when he has money sitting, it's not making him money.

20 Q. Right.

21 A. So -- so he would loan more than -- and it would
22 be the situation, too, sometimes you would get a great
23 deal on a property --

24 Q. Uh-huh.

25 A. -- and he would look at that and be like: wow,

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1 you have so much equity in this property that you just
2 bought. So he had more of a reason to loan you more,
3 too --

4 Q. Uh-huh.

5 A. -- because of that.

6 Q. Right.

7 A. So there was a lot of factors that were taken
8 into it. How much money he had at the time.

9 Q. Uh-huh.

10 A. How great of a deal the property was. So he
11 would kind of look at those and say, you know, what do you
12 need --

13 Q. Right.

14 A. -- type of thing. And sometimes we may have
15 had, like, a couple at the same time. So we had money put
16 in other properties, so we didn't have a bunch of cash.

17 Q. Uh-huh.

18 A. So that's -- so it was -- but it seemed to
19 always work out.

20 Q. Okay.

21 A. But this would not be typical. Maybe it would
22 be more typical because the deal was great, because it was
23 after seven years of doing business with them.

24 Q. Uh-huh.

25 A. So I would say that it got eventually to this.

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1 Q. I see. Okay.

2 So we see here in the first email that you are
3 sending to Denny, you say: Purchase 80k. I would like
4 60k.

5 A. Uh-huh.

6 Q. Was -- first of all, do you remember this
7 particular property transaction?

8 A. No.

9 Q. Okay.

10 A. I do remember the address, because we had bought
11 several there. That's -- the property is The Edge at --
12 in Grayhawk.

13 Q. Oh, okay.

14 A. Oh, wait. Not The Edge. There was another one.
15 There was two complexes there. One was The Edge and one
16 was The Venue. I believe this one is The Edge, yeah.

17 Q. Okay. And we see that Denny says, or you say:
18 I will probably have you wire direct to the title company.

19 A. Uh-huh. Right.

20 Q. Was there ever a situation in which Denny did
21 not fund a loan you requested directly to a third party,
22 like a trustee?

23 A. There is times where he would wire directly to
24 us.

25 Q. He would wire directly to you?

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1 A. For like the day before or something like that.

2 I'm trying to think of what the circumstances
3 would have been, but I remember him doing that before. It
4 could have been that maybe he was leaving out of town the
5 next day and he wasn't going to be around or -- or they,
6 the title company wanted -- didn't want wires from a third
7 party. They wanted -- the -- was it the title company or
8 the seller? Sometimes it would be the title company. So
9 when you said that you were going to pay in full for the
10 property --

11 Q. Uh-huh.

12 A. -- and this changed after a couple years,
13 because I remember this, the title company, when you were
14 saying that you were going to pay in full --

15 Q. Uh-huh.

16 A. -- the title companies at that time didn't care
17 where the money came from.

18 Q. Uh-huh.

19 A. So you might be bringing in 50,000, you might be
20 getting a hard-money for 100,000, and the price of the
21 property was 150.

22 Q. Uh-huh.

23 A. And I think what happened was the title
24 companies had extra expense on their end because they had
25 to do some documents for the wire or they had to do some

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1 internal administrative things that they wouldn't have to
2 do if you just brought the money in yourself.

3 Q. Uh-huh.

4 A. So if the title company had an issue with
5 getting a check directly from DenSco, there would be times
6 where Denny would send the money to you the day before so
7 that you can put it on one cashier's check and bring it
8 into the title company.

9 Q. I see. So you would combine the amount that
10 DenSco was loaning with whatever amount --

11 A. Right, exactly.

12 Q. -- you were taking in for one cashier's check?

13 A. Exactly. And that was dictated based on the
14 title company. Some title companies didn't have an issue
15 with anything, and then there were certain title companies
16 that had an issue with -- if you were saying that you were
17 buying a property in full, they wanted one cashier's
18 check. They didn't want one from one party, one from
19 another.

20 And, I mean, it all is the same as far as we
21 were concerned, because we were still getting that loan
22 and everything.

23 Q. Uh-huh.

24 A. But what would happen would be the title company
25 would dictate -- which title would dictate whether they

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1 wanted it all from one person or whether it was okay to
2 get it from two.

3 Q. Do you remember which title company or
4 companies?

5 A. I don't.

6 Q. Okay.

7 A. I just remembered that it never was an issue
8 like the first, like, five or six years. And it may have
9 happened because of -- I don't know if it happened maybe
10 because of the crash. Title companies were just concerned
11 about it more, so they started -- some started being
12 concerned about that.

13 Q. Uh-huh.

14 How often would you say that Denny sent the
15 money directly to you rather than funding the loan through
16 a third party?

17 A. I don't know, because it depended on the title
18 company.

19 Q. Uh-huh.

20 A. Because some title companies had no issue with
21 it. And we had no -- for the most part, we had no control
22 over which title company we were using, because the
23 seller --

24 Q. Right.

25 A. -- would dictate, you know, which title company

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1 to use. It was a small percent, though, because we -- we
2 never really wanted that. We always wanted it wired to
3 the title company. Because it was an added expense and
4 time and effort for us to have to do something the day
5 before --

6 Q. Uh-huh.

7 A. -- to have it set up so that we can bring
8 everything together, you know.

9 Q. Right.

10 A. So we would rather have had him just send it to
11 the title company, so then it was easier for us.

12 Q. Okay. Do you know if it was easier for Denny to
13 wire the money or to give you the money directly rather
14 than to fund the loan through a third party?

15 MR. STURR: Object to the form, foundation.

16 Q. You can answer.

17 A. It's okay to answer?

18 Q. Yes.

19 A. Okay. I don't think it made a difference to him
20 who he sent the money to, as long as he was able to record
21 immediately that he was in a first position, because
22 that's -- he is always in the first position.

23 Q. Okay. We will get back to that point of the
24 first position, but we see in this email exchange you say:
25 I will get you the wiring instructions when I get them.

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1 We can do the docs the day before. That's the last line
2 of your initial email.

3 A. Right.

4 Q. And then Denny says: You can get me the docs at
5 your leisure.

6 A. Okay.

7 Q. Was there ever a situation in which Denny would
8 have funded a loan you requested prior to the loan docs
9 being executed?

10 A. Well, I think that was pretty common in a lot of
11 ways. Like when you bought from the trustee sale, money
12 had to be at the trustee the next morning to pay for it,
13 and then sometimes you wouldn't get to John Ray's office
14 where his wife worked until later in the afternoon.

15 Q. Uh-huh.

16 A. So there would be things like that. It would --
17 you know, sometimes it would be like a couple hours
18 difference, just because of the timing of it.

19 Q. Okay. Did you -- did you work with any other
20 hard-money lenders between 2004 and 2013?

21 A. I don't believe we had a hard-money loan with
22 anybody other than Denny.

23 Q. Okay.

24 A. Well, let me think about that for a second. I'm
25 trying to remember, because there was times where Denny

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1 would have no money --

2 Q. Uh-huh.

3 A. -- and you wanted to buy a property.

4 Q. Right.

5 A. I'm just trying to think if there was anybody --
6 I know there were times where he would say, like: I'm out
7 of money and I don't foresee payoffs coming in for a
8 while, until next week or something like that. If you are
9 closing on anything between now and then, you can give
10 this person a call.

11 I don't remember -- there was a guy on Camelback
12 Road, and I don't recall his name, but I guess they had
13 worked together at a previous hard-money lender --

14 Q. Uh-huh.

15 A. -- before Denny started doing his own thing, I
16 guess.

17 Q. Uh-huh.

18 A. So when Denny was out of money, he would say
19 I'll be out of money until projected this date. If you
20 need money, go see if they have money.

21 Q. Okay.

22 A. And I don't recall who that person was, but I do
23 remember that they were on Camelback Road. And I don't,
24 I -- I think I -- I think we may have had one loan the
25 entire time we did business, because it just happened that

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1 we were closing something during that period that Denny
2 didn't have funds.

3 Q. Uh-huh. So DenSco was your primary hard-money
4 lender?

5 A. Yeah, because when we bought through the trustee
6 sale, we always used John Ray.

7 Q. Okay.

8 A. And it was a convenience thing, having Denny's
9 wife working for John Ray.

10 Q. Right.

11 Did the amount -- was there a typical amount
12 that you requested from DenSco, or were the -- or was the
13 loan amount purely dependent on the property that you were
14 interested in purchasing?

15 A. I would say for the first five to seven years.
16 Or I should say maybe the first three or four years, it
17 was a set thing --

18 Q. Uh-huh.

19 A. -- where it was always, you know, if you bought
20 it for this, this is the percentage. And I don't remember
21 what that was. I think it was like, I don't know,
22 20 percent down or something like that was -- and it's
23 been so long ago, I don't even remember what the
24 percentage was. But until you got to the point where you
25 had a good history --

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1 Q. Uh-huh.

2 A. -- of being a good borrower, where you would be
3 able to adjust that number, based on the circumstances.
4 One, it would have to be a property that had a ton of
5 equity in it so that he felt that he was protected.

6 Q. Uh-huh.

7 A. So it would have to be that situation.

8 Q. I see.

9 Is it fair to say that over time, once you had
10 established this relationship with Denny --

11 A. Uh-huh.

12 Q. -- that he became more relaxed in his
13 requirements for giving you loans?

14 A. I guess probably.

15 Q. Okay.

16 A. Yeah. I guess that's a natural thing of
17 business, of, you know, getting comfortable with who you
18 are working with and the reliability of that person.

19 I mean, we have never had a late payment. We
20 never -- and we never had an issue with documents. We
21 never had an issue with anything along those lines, so I
22 think that he probably felt comfortable with me.

23 Q. Okay. Were -- did the loans that -- I'm
24 assuming that the loans you took out were memorialized in
25 some kind of agreement.

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1 Is that correct?

2 A. Well, the loan documents.

3 Q. Right.

4 A. Yeah.

5 Q. Okay. And was the typical term of the loan six
6 months?

7 A. I believe that it was the maximum, yeah.

8 Q. So was there ever a situation in which you
9 negotiated for a different term of a loan?

10 A. No. I think what had happened, though, was
11 during the crash, when he was -- when you were getting
12 properties for rentals -- and they were so cheap, I mean,
13 I remember getting properties for \$40,000, and somebody
14 was paying a rent that was a thousand dollars a month, and
15 his hard-money loan was, let's say, \$400 a month, so there
16 was a lot of room in there.

17 So I think what happened during that time of the
18 crash is that I think he had to change -- this is just me
19 thinking out loud, was that he probably had to change his
20 business a little bit because there was more people at
21 that time doing rental home properties --

22 Q. Uh-huh.

23 A. -- as opposed to flip properties, because it was
24 so hard to flip because inventory was so abundant. So I
25 think what happened was he changed with what the borrowers

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1 were doing.

2 Q. I see.

3 A. At least in my cases it kind of worked out that
4 way. I'm assuming that he did that with everyone else,
5 too. So, I mean, we didn't have a lot of them. Like I
6 said, I think we probably had like six or seven rental
7 properties that would go past the six months.

8 Q. Uh-huh.

9 A. But I think for the most part, and I think he
10 would just like renew it for another six months type of
11 thing.

12 Q. Right.

13 A. And then I think we ended up selling all those
14 rental properties, like, within a year, year and a half.

15 Q. I see. And these are rental properties that you
16 had initially purchased with DenSco loans?

17 A. Correct. Yeah.

18 Q. And so in those couple situations where you went
19 past the six-month or whatever the time period was --

20 A. Uh-huh.

21 Q. -- did you know that technically under the --
22 under the terms of the note, DenSco likely could have
23 enforced additional rights against you?

24 For example --

25 A. I --

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1 Q. Sorry. Go ahead.

2 A. Maybe, I guess.

3 Q. Well, for example, I'm thinking of -- and for
4 whatever reason, we couldn't find any specific loan
5 documents, so I understand that this may be difficult, but
6 we have seen that if someone did not repay their loan on
7 time, they would perhaps have to pay a much higher
8 interest rate on their loan --

9 A. Okay.

10 Q. -- as sort of like a punitive measure.

11 Was there ever a situation in which Denny may
12 have done that with you when your loans went over the six
13 months?

14 A. Never had that discussion. Never -- the subject
15 never came up.

16 Q. Okay.

17 A. I think that he knew right away that we were
18 keeping it as a rental property.

19 Q. Uh-huh.

20 A. I don't think it ever came up where, okay, at
21 six months, you need to sell this and, you know, pay us
22 off. I think because of the time that that was, during
23 the crash, where nobody was really flipping properties,
24 because you couldn't flip, I think that at least that was
25 my view of it.

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1 Q. Uh-huh.

2 A. I guess I don't know what he did with anyone
3 else, but I wasn't aware of him -- I mean, he never
4 mentioned anything about that, that I recall.

5 Q. Did you ever hear Denny discuss having problems
6 with any other borrowers?

7 A. No. The only thing I ever heard was like he
8 would say, you know, I got three of them back last year --

9 Q. Uh-huh.

10 A. -- or something like that. Or sometimes he
11 would get a property back from someone and say: Hey, I'm
12 getting -- I got this property back. The person never
13 finished, you know, remodeling it or whatever. Are you
14 interested in it?

15 Q. Uh-huh.

16 A. And I don't think I ever bought one, because it
17 was like in neighborhoods that we wouldn't -- that we
18 didn't like doing business with.

19 Q. Right.

20 A. That's the only time I have ever heard of
21 anything like that.

22 Q. But you never heard Denny complain about a
23 specific borrower?

24 A. No. Not a specific borrower, no.

25 Q. Okay. You had mentioned earlier that Denny took

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1 steps whenever he would fund a loan to ensure that DenSco
2 was in the first position.

3 A. Right.

4 Q. Do you know what Denny did to ensure that DenSco
5 was in the first position?

6 A. Well, if it was at a title company --

7 Q. Uh-huh.

8 A. -- that -- they did that.

9 Q. Right.

10 A. So in those rare instances where the title
11 company would say we want it in one check from one person,
12 from the buyer, and he sent it the night before, then he
13 would say: Okay. The second that you close on it, the
14 second you hear the title company call you and say it's
15 closed or it's been recorded, call me so I can record and
16 be in first position. So that's what we would do.

17 Q. Okay.

18 A. And it didn't happen that often. I mean, for
19 the most part, like I said, it was just certain title
20 companies that for some reason had an issue with that.

21 Q. Right.

22 A. And for the first, like, five years, I don't
23 remember it ever coming up. And I think it, again, in my
24 opinion, I think it's just because of the crash and title
25 companies got a little concerned about where money was

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1 coming from and stuff.

2 Q. Right.

3 And I think I know the answer to this question,
4 but did you ever have a competing loan on a property that
5 you had purchased with DenSco money?

6 A. I don't understand the question. What do you
7 mean by "competing loan"?

8 Q. Meaning did you ever take out individual loans
9 from different hard-money lenders --

10 A. Never.

11 Q. -- to purchase the same property?

12 A. No.

13 Q. Did you ever hear of a situation, prior to
14 Denny's death, where Denny had that situation with another
15 borrower?

16 A. No. And I -- I don't even know how that even
17 would happen, because he was really -- even though we had
18 a good working relationship --

19 Q. Uh-huh.

20 A. -- I remember him always saying: Okay. Call me
21 the second you hear from the title company, because I need
22 to record right away.

23 Q. Right.

24 A. So he was -- in those instances where we had
25 that come up, I remember him being very persistent about

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1 that. But I would think for all the properties that we
2 did, I guess I wouldn't know for sure, but I would --
3 maybe three or four.

4 Q. Yeah.

5 A. It was a very small percentage of the total
6 number that we did that the title company wanted it all
7 from us.

8 Q. Right.

9 So you had said earlier that you didn't meet
10 Denny Chittick for, I think you said, the first year that
11 you were doing business with him. Is that right?

12 A. I don't know if it was the first year, but it
13 could have been -- it could have been six months. It
14 could have been two years, you know. I don't -- and the
15 reason why I'm struggling with that, is I'm trying to
16 remember the first time I went to his home.

17 Q. And is that the first time you met him at his
18 home?

19 A. Maybe he was at John Ray's office one day --

20 Q. Okay.

21 A. -- and I met him that way. I don't recall the
22 actual first physical meeting.

23 Q. Okay. After you began your borrowing
24 relationship with him, did -- I think I have seen
25 references, and we will look at the document a little bit

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1 later, but I think I have seen references to you meeting
2 with Denny --

3 A. Yeah.

4 Q. -- every month.

5 A. Right.

6 Q. Is that right?

7 A. Yeah. So after a while, and like I said, I
8 don't know if it was a year, I don't know when it actually
9 started, but we had a thought that, you know, maybe we
10 should meet for lunch once a month. And I would share
11 with Denny what I was seeing on the street as far as
12 competitiveness. And because I was a realtor, I was also
13 a flipper, so I would share what I'm seeing on the street.

14 Q. Uh-huh.

15 A. Whether it's, you know, really hard to get
16 properties right now on the MLS. I'm seeing multiple
17 offers on my end when I put bids in.

18 So I would kind of share with him what I was
19 seeing on my end, and then he would share with me, like,
20 what he is seeing from borrowers and what he is hearing
21 from borrowers. And so we would kind of share that
22 information.

23 Q. Okay.

24 A. So it made us more aware of the entire real
25 estate market.

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1 Q. Uh-huh.

2 A. So we did that for a couple months, and I
3 remember Denny saying that: You know what? I think this
4 is a good idea that we -- that we discuss what's going on.

5 Q. Uh-huh.

6 A. Because it was my understanding that he didn't
7 get out of his office much.

8 Q. Uh-huh.

9 A. So he would -- he would get insight from --
10 well, whatever value it was. I would say, you know, I'm
11 seeing, when I put offers in on properties, there is
12 multiple offers, so it's very competitive out there right
13 now. And whenever I'm trying to get a property over -- or
14 between 100 and 200,000, there is more competitiveness on
15 the street in that category.

16 So I would share with him what I'm seeing on the
17 street as a realtor and as a flipper, and then he would
18 share with me, like, an overall picture of what he is
19 seeing on his end, and we would just kind of learn from
20 each other.

21 So after a couple months, then he said: You
22 know, this is a good thing. I'm learning a lot, because
23 I'm in the office all the time. And he was a pretty smart
24 guy.

25 Q. Uh-huh.

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1 A. So he would share, like, insight of what he is
2 seeing on a national scale --

3 Q. Yeah.

4 A. -- that we wouldn't even look at. But he would
5 share that with me, give me a better idea of what maybe
6 the national housing market is going towards.

7 And so he always kind of prided himself on being
8 on top of the, I guess you would call it the macro, and we
9 were more on the micro, because we were like feet on the
10 ground type of thing.

11 So after a couple months, I remember him saying:
12 This is a good idea. Maybe we should expand it and invite
13 more people. And I was like: Yeah, that's fine with me.

14 So then it became a couple people that -- a
15 couple borrowers that I had never met that he would say:
16 Hey, you know, let's meet at this restaurant and we will
17 have lunch and we will talk about what everyone is
18 seeing --

19 Q. Uh-huh.

20 A. -- and trends in the market, and things that are
21 changing that we can be on the front end, because one of
22 us saw something that wanted to share it with that other
23 people.

24 Q. Right.

25 A. And then that started to grow. And I think -- I

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1 think it got to the point where there was, like, 20
2 people.

3 Q. Okay. And this is what eventually became the
4 MOM group, correct?

5 A. Yes.

6 Q. And that stands for Meeting of the Minds?

7 A. Yes.

8 Q. Is that a name that Denny came up with?

9 A. Yeah.

10 Q. Just to back up and touch on a couple of the
11 points that you had raised earlier, you said earlier that
12 you didn't think Denny got out of the office that much.

13 what gave you that impression?

14 A. I never heard of him going out. I mean, he
15 never came to one of our properties. I never saw them
16 on -- I never saw him on a property.

17 The only time I ever saw him was like there were
18 times where I had to drop a check off or something and it
19 was always at his home. It was never like -- it was never
20 like: Oh, meet me at this address because I'm out and
21 about right now.

22 Q. Uh-huh.

23 A. So I guess that was my impression, that he
24 didn't get out much. And it seemed like what he was doing
25 was high -- I should say a lot of time consumption with

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1 the computer --

2 Q. Uh-huh.

3 A. -- and copying and doing documents. And so I
4 guess that was just an assumption on my part, but I think
5 it was a good guesstimate, because -- or a good guess,
6 because I never saw him at a property of mine. I never
7 heard of him going to another property. Any time I ever
8 met him in dropping off a check, it would be at his home.
9 So I guess that was just my assumption.

10 Q. Did you interact with him socially at all?

11 A. No.

12 Q. No.

13 Did you get the impression from your
14 interactions with him that Denny had many friends?

15 A. You know, he was -- he seemed like a personable
16 guy.

17 Q. Uh-huh.

18 A. I mean, when you did spend time with him, he did
19 a lot of talking. Like when we had those Meeting of the
20 Mind meetings, he pretty much talked the whole time.

21 Q. Uh-huh.

22 A. I guess I don't know, because I never -- I never
23 was with him socially, so I never, you know, met any other
24 friends that he may have had. It seemed like he was
25 working all the time. It didn't -- you know, he was

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1 always -- he seemed like he was always accessible to you.

2 Q. Uh-huh.

3 A. I mean, I remember times where he would send out
4 an email and say: Okay. I'm going to be out of state for
5 four days, but if you need something, call me.

6 Q. Uh-huh.

7 A. So he seemed like he was always accessible to
8 people.

9 Q. Okay.

10 A. But as far as friends, I didn't know that.

11 Q. Okay. You had also mentioned that Denny prided
12 himself on being on top of the macro.

13 A. Right.

14 Q. I guess what was going on in the economy.

15 what, in your interactions with him, gave you
16 the impression that he was --

17 A. It was that monthly meeting.

18 Q. Okay.

19 A. So he would -- he would kind of share things
20 that were like, for lack of a better term, over our head.
21 You know, where we were doing -- doing physical stuff, we
22 were remodeling houses, we were going to the trustee, I
23 would go looking at trustee houses and we were -- you
24 know, we didn't have time to do that.

25 Q. Uh-huh.

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1 A. So he -- for usually like the first, I don't
2 know, 15 minutes of the Meetings of the Mind meeting, he
3 would kind of give everyone an overview of the local
4 market, how many sales last month.

5 Q. Uh-huh.

6 A. Like, for instance, he would say: Okay. There
7 was 9,000 homes that sold last month. This is how it
8 compared to the month before. This is how it compared the
9 last year at this time. And we just didn't have time to
10 do stuff like that, I mean, so he would compile a lot of
11 stuff. And that was, I guess, his part of the meeting,
12 was that he would give an overview of the market.

13 Q. Right.

14 Did you think Denny was smart?

15 A. Very much so, yeah.

16 Q. If someone asked you to describe Denny, what
17 other adjectives would you use?

18 A. Reliable. Like I said, if you ever needed
19 something, it was very rare that if you called him for
20 something, he didn't pick up. There was times where he
21 might pick up and say: Hey, I'm on the phone with someone
22 else. I'll give you a call right back --

23 Q. Uh-huh.

24 A. -- type of thing, and he would. So it seemed
25 like he was very aware who his customer was, and it was

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1 the borrower --

2 Q. Uh-huh.

3 A. -- and he would be accessible to them.

4 Q. Okay.

5 A. So I think the biggest thing would be, because I
6 didn't know him socially --

7 Q. Uh-huh.

8 A. -- just reliability. Because when -- there is
9 oftentimes where sometimes you might be bidding on a
10 property that -- off the MLS, and one of the determining
11 factors to get that house might be that you are going to
12 do a quick close, close in seven days as opposed to 30.

13 Q. Uh-huh.

14 A. So you would have to call him and say: Hey, I'm
15 thinking about putting this offer in. would you have
16 funds for it --

17 Q. Uh-huh.

18 A. -- if I did get it? And, you know, whenever you
19 had that, he would answer the phone and he would be able
20 to tell you. And if he told you that, yes, he would have
21 80,000 for you next Thursday to apply to that, if you got
22 the bid, if you got that house --

23 Q. Uh-huh.

24 A. -- it would be there for you.

25 Q. Right.

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1 A. So reliability, I think, is the one thing that I
2 would describe.

3 Q. Okay. Let's jump a little bit to -- you
4 mentioned the MOM meetings.

5 (Deposition Exhibit No. 1034 was marked for
6 identification.)

7 Q. From what we can tell, this appears to be the
8 first email where the MOM meeting is coming up.

9 A. Okay.

10 Q. Do you recall receiving this email?

11 A. No. It was so long ago.

12 Q. Right.

13 A. Let me read it again just real quick.

14 Q. And it's fine if you don't.

15 A. This was 2010. Okay.

16 Q. So we see here that this comports with what you
17 said earlier, that this initial email was just sent out to
18 a small group of investors.

19 A. Right.

20 Q. And you will see that the last name in the "to"
21 line is Scott Menaged.

22 A. Right.

23 Q. And you had said, I believe, that you had never
24 met any of these other investors before the MOM meetings
25 started happening?

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1 A. Right. Exactly.

2 Q. After the MOM meetings started, did you meet
3 Scott Menaged at one of those meetings?

4 A. I think he came once to one. He seemed to be
5 more -- I think -- and the impression I got from meeting
6 him was like, you know: why am I sitting here with these
7 small-time investors or borrowers, you know.

8 Q. And what --

9 A. And I don't know -- and I don't know at this
10 time whether Scott was on that show yet or not, and that's
11 how everyone kind of became aware of who he was.

12 He -- I remember that he -- I don't know. He
13 just seemed like he kind of -- the one time that I met him
14 at this, and I think he only came to one, the one time
15 that I met him at that, he seemed like he was too good to
16 be a part of that, that we were just small-time investors.

17 Q. And do you remember what it was about him at
18 that meeting that gave you that impression?

19 A. I think -- I think it was just that the volume
20 that he was doing was so much more than what we were
21 doing. I mean, it was just my wife and I.

22 Q. Uh-huh.

23 A. So, like, when things came up like in
24 conversations, you know, subjects that we would talk
25 about, I remember: well, you guys should be just doing

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1 this or, you know, it seemed like he was like way above at
2 least what I was doing. So that was the impression I got.

3 So maybe these other guys -- I know -- I know
4 Chris did a lot more than most people did. I know Chris
5 Hughes did probably -- I know he built like a couple
6 hundred properties as rentals.

7 Q. Uh-huh.

8 A. I don't really know Michael Moore. At least I
9 don't recall who he was. I know one of these guys, either
10 Kirk or Don, was like a CPA or something like that.

11 Q. Okay.

12 A. But that's all I really remember about this.

13 Q. Now, you said that you only met Scott at these
14 MOM meetings once.

15 Did you subsequently interact with Scott
16 Menaged?

17 A. No. I -- I did interact with him once only
18 because he had bought a property from us.

19 Q. Uh-huh.

20 A. We had a property that we had under contract in
21 Fountain Hills, and it was a higher-end property. It was,
22 I think, like in the \$500,000 range. And we were going to
23 close on it and we weren't sure whether we were going to
24 keep it and try and resell it or whether we should try
25 wholesaling it to another investor that was used to doing

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1 properties in that price range, because we weren't. So I
2 remember contacting Denny and saying: who are the guys
3 that do these higher-end properties? And I think he gave
4 me a couple of names.

5 Q. Uh-huh.

6 A. And Scott was interested in the property, so we
7 ended up wholesaling the property to Scott, and then he
8 went ahead and did what he did with it.

9 Q. Uh-huh.

10 A. So that was -- that was the only interaction
11 that we had with Scott. And I think one more time after
12 that we were -- we were thinking we were getting a
13 property that was in that price range again. So since he
14 bought that one, I said: Hey, Scott, we might be getting
15 this property. Are you interested?

16 Yeah, let me know if you get it. And I don't
17 think we got it.

18 Q. Okay. Do you remember roughly the timeframe
19 that you may have engaged in this property transaction
20 with Scott?

21 A. I think it's on the tail end of -- of when we
22 were even doing real estate. And that was one of the
23 reasons why we were -- we wanted to wholesale, was because
24 we didn't like where the market was, my wife and I, and we
25 were conservative. So we would much rather -- you know,

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1 we were good at sometimes finding properties for other
2 investors.

3 Q. Right.

4 A. So it was less of a risk for us if we just
5 wholesaled it to someone else that was willing to do the
6 back-end stuff, like repairing and then retailing it to an
7 end-user customer.

8 So for a while there at the end, we were kind of
9 too scared, with the market going up as high as it went,
10 to do a retail flip. I -- we were just so hurt by what
11 happened during the crash, that -- and prices had come up
12 so quickly, that we were just concerned that any day now,
13 and obviously we were wrong, because it's still going good
14 right now.

15 Q. Right.

16 A. So -- which was very disappointing, because we
17 probably have lost, you know, a lot of money because of
18 that over the last few years of not staying in the
19 business, but it hurt us so much during that crash that we
20 were gun shy.

21 Q. Right.

22 A. You know, if we got something, we would much
23 rather wholesale it to someone the next day than to try
24 and retail it and hold it and pay a hard-money loan. And
25 we just didn't have the stomach for it anymore.

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1 Q. Right.

2 (Deposition Exhibit No. 1035 was marked for
3 identification.)

4 Q. So, Kevin, I'm handing you what I think is the
5 property that you were talking about.

6 A. Okay.

7 Q. And these emails are kind of all over the place,
8 but they are everything I could find, and they all appear
9 to relate to the same property.

10 A. Right.

11 Q. So you can go ahead and look through and tell me
12 if any of this seems familiar to you or if this is in fact
13 the property that you were talking about.

14 A. I think that it is, because this is -- it was
15 like the last block of Scottsdale or something like that,
16 and then like the next -- the next street was Fountain
17 Hills, or part of the subdivision was Fountain Hills, part
18 of it was Scottsdale. It was like right -- and if I can
19 put in the address in my phone just to see a visual --

20 Q. Uh-huh.

21 A. -- is that all right? Because I don't know
22 where Summit is.

23 Q. Right.

24 I guess my question would be, are you sure that
25 you only did one actual property closing with Scott

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1 Menaged?

2 A. Yeah.

3 Q. Okay. So let me direct you then to, it's the --
4 you will see that at the bottom of the pages on the bottom
5 right there are numbers, so if you look at the document
6 where the first page is CH_REC_CHI_0024215. I think it's
7 actually this first one. This first page.

8 A. Oh, this?

9 Q. Yes.

10 A. Oh, okay.

11 Q. And if you turn -- do you see the numbers on the
12 bottom right?

13 So if you turn to the page that has the number
14 CH_REC_CHI_0024129.

15 A. Okay.

16 Q. And at the very bottom, you will see that there
17 looks to be an email from melissa.mustari --

18 A. Okay.

19 Q. -- @homesearch.com. And if you flip the page,
20 this appears to be -- I'm sorry. If you go back to 219,
21 you will see that this email is addressed to Scott
22 Menaged. She says: Hello Scott Menaged.

23 A. Oh, okay.

24 Q. And then just above that, there is an email from
25 Susana Pepe that says: Kevin please send to Melissa. And

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1 it's sent to you.

2 A. Okay.

3 Q. As you are looking at this, does this refresh
4 your recollection at all as to this property transaction?

5 A. Yeah. I think what we might have done with
6 this, and I'm trying -- and I'm not 100 percent sure, but
7 this Home Search was like an online auction company, if I
8 remember correctly.

9 Q. Uh-huh.

10 A. So they would put properties out online --

11 Q. Uh-huh.

12 A. -- and we would put offers in. Because I was
13 also a licensed agent, I would put offers in. And if I
14 got -- in this case we wanted to wholesale it. So I think
15 we had put Scott's name in to be the buyer --

16 Q. Uh-huh.

17 A. -- because we were wholesaling it to Scott.

18 Q. I see.

19 A. And we were just the agent --

20 Q. Oh.

21 A. -- for it.

22 Q. I see.

23 A. So initially I think, if I remember correctly,
24 initially I think we -- we were the highest bidder on this
25 property. And then in the period of time that we had to,

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1 like, finalize the paperwork and everything, was when
2 Denny shared Scott's name and said Scott, you know, deals
3 with properties in that price point. So then we had
4 showed Scott as the buyer and us at the agent.

5 Q. Oh, I see. Okay.

6 A. So then -- so then that way Scott -- we never
7 took possession as owners.

8 Q. Okay.

9 A. But we -- so we wholesaled it to Scott to be the
10 buyer.

11 Q. And in that interaction with Scott, what were
12 your impressions of working with him?

13 A. The only thing I remember about that deal was I
14 think that we had agreed that he would -- that he would
15 give us so much money as the finder of the property, a
16 finder's fee.

17 Q. Uh-huh. That Scott would give you certain
18 money?

19 A. Right. Exactly. I think -- and it was
20 customary, when you wholesale a property, the next
21 investor would give you a wholesale fee, like a finder's
22 fee type of thing. And I -- the only thing I remember
23 about that deal was like we settled on a number, and then
24 I was just relying on Scott to then give us the check the
25 next day or something like that after closing.

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1 Q. Uh-huh.

2 A. And I don't know if he had found something in
3 the property that was like a light fixture he didn't
4 notice was broken or something like that, but he -- you
5 know, we had agreed on a certain number, which I don't
6 remember what the number was, maybe it was like 5,000 or
7 something like that. "well, I'm only going to give you
8 4200." That's the only thing I remember about that deal.

9 Q. Uh-huh. Did you interact with Scott enough to
10 be able to describe him at all, like you did with Denny?

11 A. No. I mean, with Denny, I saw Denny every
12 month.

13 Q. Uh-huh. Uh-huh.

14 A. In this case, I think I talked to Scott once
15 after that deal, because we had another property that was
16 in that price level, that --

17 Q. Right.

18 A. -- knowing that he bought those level houses, I
19 had a conversation with him about it: Hey, would you be
20 interested in it? And like I said, I don't think we ever
21 got the deal. And I think I only met him twice. I met
22 him at the MOM's meeting.

23 Q. Uh-huh.

24 A. And then I met him when he gave me the check for
25 the finder's fee for this property. I think that's the

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1 only two times that I physically --

2 Q. Met him?

3 A. -- met him.

4 Q. Okay.

5 A. So it would be hard to -- but that was my last
6 impression, was that, you know, we settled on a certain
7 number --

8 Q. Right.

9 A. -- and then he came in and said: well, you
10 know, I found this, this and this, and I'm going to only
11 give you 4200. And I was like: whatever. Just -- you
12 know, it wasn't that -- just the fact that he was going to
13 just tell me what he was going to pay me after we said --

14 Q. Right.

15 A. -- a number, I guess that's the only lasting
16 impression I had of the whole situation.

17 Q. Did Denny ever talk to you about Scott Menaged?

18 A. No.

19 Q. Okay. We have been going for a little over an
20 hour.

21 (A recess was taken from 10:26 a.m. to
22 10:32 a.m.)

23 Q. Sorry. Go ahead.

24 A. I'm sorry. There was something that I wanted
25 to -- now that I thought about it, one of the things that

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1 you asked about --

2 Q. Uh-huh.

3 A. -- was, if we go back to that Exhibit 1033 --

4 Q. Okay.

5 A. -- and you had said the purchase, or it said in
6 the email the purchase is 80, and would like 60.

7 Q. Uh-huh.

8 A. When it was a very low-cost property, he was
9 more inclined to do more lending. I mean, in other words,
10 if I -- if I said, you know, I'm getting a \$600,000
11 property, I want 540 --

12 Q. Uh-huh.

13 A. -- no. And I wouldn't even think of even asking
14 that.

15 Q. Right.

16 A. But when you had something that was very low in
17 cost --

18 Q. Uh-huh.

19 A. -- like I said, my wife and I are very
20 conservative, so -- and don't like a lot of risk, so we
21 were always like in this price range, or tried to to stay
22 in the cheaper properties.

23 Q. Uh-huh.

24 A. So he would tend to be more acceptable to doing
25 a little more on smaller deals.

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1 Q. I see. Okay. So safe to say that on smaller
2 deals, there was maybe less scrutiny from Denny?

3 A. I don't know if I would necessarily classify it
4 as less scrutiny. There was -- there was more leeway for
5 borrowing maybe a little bit more.

6 Q. A little bit more --

7 A. Meaning like if -- I mean, in the first five
8 years, like I said, he would pretty much say, okay, it was
9 30 percent, or whatever that number was. I don't remember
10 what the number was. So when you were borrowing back
11 then, you just knew that that's what you had to bring in.

12 Q. Right.

13 A. I mean, if it was 100,000 and it was 20 percent,
14 you needed to bring 20K in. But I think when it got down
15 to the crash and some of these cheap properties --

16 Q. Uh-huh.

17 A. -- that everyone pretty much knew that you
18 couldn't even build the home for what you bought it for,
19 you know. Like this -- these properties we were getting
20 for 40,000, you couldn't -- the material was more --

21 Q. Right.

22 A. -- than what you were buying the houses for at
23 that time. So there was very low risk with those
24 properties.

25 Q. I see. Okay. Thank you for clarifying that.

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1 Going back briefly to the one time that Scott
2 Menaged attended an MOM meeting and Denny was there, I
3 understand this was a long time ago and it was only once,
4 but did you observe or hear of anything or, I guess --
5 that's a bad question.

6 Did you observe anything about the relationship
7 between Denny Chittick and Scott Menaged at that one MOM
8 meeting?

9 A. No. And I -- let me just say this. I'm
10 assuming that you are asking me the question because of
11 what did eventually happen.

12 Q. Yes.

13 A. Okay. So knowing that I know that, and thinking
14 about that meeting --

15 Q. Uh-huh.

16 A. -- I don't think that they were really doing a
17 lot of business at that time.

18 Q. Okay.

19 A. It seemed like -- it was my understanding that I
20 think Scott was doing more business with Buy AZ, a
21 different company, and I think he was even, like, with
22 them or an employee of, so he wasn't with John Ray side of
23 things.

24 Q. Uh-huh.

25 A. So it was my impression that he was just another

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1 investor that was coming to the meeting that day.

2 Q. I see.

3 A. I didn't get the impression like they were,
4 like, pals or old friends or anything.

5 Q. Right.

6 A. So that's what I can share with you.

7 Q. Okay. That's helpful.

8 (Deposition Exhibit No. 1036 was marked for
9 identification.)

10 Q. So this is an email from Denny, and you are the
11 second recipient on this list.

12 A. Uh-huh.

13 Q. And do you recall receiving this email?

14 A. No. And 2010. So it was kind of the heart of
15 the crash, I guess.

16 Q. Right.

17 And you see that Denny says: From today
18 forward, I'm going to make it mandatory to have title
19 insurance if you are purchasing a property from the
20 auction.

21 Prior to receiving this email, did you, as a
22 borrower, ever purchase title insurance?

23 A. I don't think I -- we ever bought title
24 insurance on anything.

25 Q. Even after receiving this email?

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1 A. Yeah, because we didn't buy -- I don't think we
2 bought any properties at the auction --

3 Q. I see.

4 A. -- after this. I think my wife and I just
5 bought properties off the MLS.

6 Q. Uh-huh.

7 A. So it really didn't apply to us, because you are
8 getting title insurance from the title company.

9 Q. Right.

10 A. And all of our deals pretty much went through
11 the title company when you are buying off the MLS. That's
12 typical.

13 I don't think -- I don't think the last few
14 years that we were in the business we bought anything from
15 the trustee sale.

16 Q. Okay.

17 A. So -- and as far as prior to that, I don't think
18 we ever had an issue, and I think it was partly because
19 when you bought -- we never bought properties on our own
20 at the trustee sale.

21 Q. Okay.

22 A. We were too conservative. And let me share
23 something with you about that and why I say that. The
24 bidding service companies, like John Ray's, they had a
25 title company that they worked with that would investigate

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1 the property --

2 Q. Uh-huh.

3 A. -- before you bid on it, and when they sent the
4 list out of what's going tomorrow, that list already
5 showed properties that they knew were first position
6 liens --

7 Q. Okay.

8 A. -- so that you weren't bidding on a second
9 position lien.

10 Q. Okay.

11 A. So you already knew on the front end that you
12 were safe, and that meant a lot to my wife and I. I mean,
13 I never -- I would never go down myself to the trustee
14 sale and buy something, because I didn't have that
15 relationship with the title company that would do that for
16 me and investigate it and say, yeah, it's okay to bid on
17 it. Because John Ray had his own business doing this
18 service, he had a relationship with the title company,
19 and, you know, they knew what was going tomorrow, so they
20 would, in turn, tell John Ray, you know, what's going
21 tomorrow that's a first-lien position.

22 Q. Uh-huh.

23 A. And then he would then send the list to every
24 potential bidder.

25 Q. Right.

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1 A. So title insurance wasn't important. And I
2 think when he sent this out, it was a broad thing that he
3 sent out to every borrower.

4 Q. Uh-huh.

5 A. Even ones that weren't even buying from the
6 trustee sale.

7 Q. Right.

8 Okay. So did you -- and I know there are a lot
9 of recipients. I don't need you to review all the
10 recipients, but did you come to know any of the other
11 borrowers of DenSco?

12 A. Because of these meetings, yeah.

13 Q. Okay.

14 A. Because we met every month for, like, I don't
15 know, two years.

16 Q. Right.

17 And did you ever hear from any of the other
18 borrowers whether they were procuring title insurance on
19 the properties that they were purchasing from auction?

20 A. It was something that was never, never talked
21 about, you know. As I remember, I don't remember us ever
22 having a -- you know, a one-on-one conversation about
23 title insurance.

24 Q. Right.

25 A. I know that -- I'm sure that in probably the

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1 next meeting that we had after he sent this out, he
2 probably addressed the group again --

3 Q. Uh-huh.

4 A. -- and probably said why he did this --

5 Q. Okay.

6 A. -- you know, in person to everybody.

7 Q. Okay.

8 A. But yeah.

9 Q. Based on your interactions with Denny as a
10 borrower in other contexts, if Denny sent out this email
11 saying that it was mandatory to get title insurance, do
12 you think he would have in fact taken steps to ensure that
13 everyone was procuring title insurance?

14 A. Usually when he said something, you know, that's
15 what he was doing.

16 Q. Okay.

17 A. I'm assuming that's what he did.

18 Q. It appears from the emails that we have seen
19 that at a certain point --

20 (Deposition Exhibit No. 1037 was marked for
21 identification.)

22 Q. -- that the idea was floated to start a title
23 company.

24 A. Right.

25 Q. Is that correct?

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1 A. Uh-huh.

2 Q. And what are the circumstances are -- I guess I
3 should ask, was the idea to form a title company Denny's
4 idea?

5 A. No. I think it was these guys from Sharp
6 Equity. I think it was David and Kyle, if I remember
7 correctly.

8 Q. Do you know David and Kyle's last name?

9 A. Well, it's on here. David Arcne and Kyle Brown.

10 Q. Okay.

11 A. And I only know their last names because they're
12 underneath. I believe -- I'm trying to remember here.

13 Q. Were those borrowers?

14 A. Yes. And I believe that David and Kyle, if I'm
15 not mistaken, I believe David and Kyle were the two owners
16 of Sharp Equity, LLC.

17 Q. Okay. And what were the circumstances that
18 caused you all to want to form a title company?

19 A. Well, I wasn't one of them. I was not smart
20 enough to even think about something like that, but I
21 think what it was was that David and Kyle started coming
22 to the meetings.

23 Q. Uh-huh.

24 A. And they were like the young guys that were
25 energetic and were coming up with all these ideas that,

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1 you know, let's -- let's -- I think that they had, like --
2 there is a title company and then there is a closing
3 company, or was it title and -- what's it called, title --
4 closing company and title company I think are two
5 different things, if I remember. Like this was only for
6 the title insurance part of it, I think.

7 Q. Oh, okay.

8 A. It wasn't the actual closing.

9 Q. I see.

10 A. So these guys, Kyle and David, came up with an
11 idea one month: Hey, we should -- we should do a title
12 company.

13 Q. Uh-huh.

14 A. And I think they, like, researched it and had
15 some idea of how it could be set up. And whoever happened
16 to be in the meeting that day, I think was exposed to the
17 conversation.

18 Q. I see.

19 A. And then it turned out to be -- and then like a
20 couple, I think it was a couple months later, one of those
21 guys sent out an email saying if you want to be a part of
22 this title company that we are doing, this is what the
23 buy-in was.

24 Q. Uh-huh.

25 A. And it was something really small. I mean,

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1 again, my wife and I are not risk takers per se, so I
2 think it was like \$1,500 or something like that. And I'm
3 like, well, geez, for \$1,500, I'll take a chance on that,
4 especially if I don't have to spend any time on it.

5 Q. Right.

6 A. So we went ahead and did that. And I remember
7 that it was set up, and we were such small investors that
8 it seemed like we never ended up using it. I mean, we
9 never used the title company that was put together.

10 And I don't know if -- I don't know if half of
11 the people even used the title company. I think what
12 ended up happening was the closing agent, like whenever
13 you said: Hey, can you use this title company --

14 Q. Uh-huh.

15 A. -- the closing agent will say: well, we have
16 our own. You know, some closing companies had their own
17 division for title.

18 Q. Right.

19 A. So like they would say: well, no. We are going
20 to use our own department for that.

21 And we were not big enough investors to where,
22 you know, we can tell a closing agent: well, no. I want
23 you to use this title company.

24 And I think after this was even set up, we were
25 kind of like -- and I think, what was this, 2011 -- we

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1 probably -- we may have done maybe five or ten more
2 properties before we stopped even being in real estate.

3 Q. Right.

4 A. So it really wasn't a big deal for us. I had
5 heard, like, the next month at a MOM's meeting, or a month
6 after that, there was a couple guys that tried to use it
7 and it didn't work out, for the same reasons that I was
8 saying, and it just never materialized into anything.

9 It -- I remember like four, I don't know, four
10 months later after this, six months later, Kyle and David
11 sending out an email saying that we are no longer having
12 this title company --

13 Q. Okay.

14 A. -- because it didn't do any business and it
15 didn't work out the way everyone thought it was going to
16 work out, and I think we ended up getting like 80 percent
17 of our \$1,500 back.

18 Q. I see. Okay.

19 (Deposition Exhibit No. 1038 was marked for
20 identification.)

21 Q. So this email, if you flip to the last, or not
22 the last page, I'm sorry, the second page, you will see
23 that there is this email from David --

24 A. Right.

25 Q. -- on Wednesday, August 3rd, and it's talking

KEVIN POTEPA, 7/11/2019

1 about the title company and who owes what.

2 A. Right.

3 Q. And so I believe, is Kauai --

4 A. Yeah, Kauai. That was --

5 Q. Is that right?

6 A. That was an LLC that we had that we put
7 properties in for protection.

8 Q. Right.

9 And you see right above that Scott M --

10 A. Right.

11 Q. -- has a larger share.

12 After looking at this, did you interact with
13 Scott at all --

14 A. No.

15 Q. -- with regards to this title company?

16 A. Never. He -- and I, like I said, he never even
17 came to the meetings.

18 Q. Right.

19 A. So, you know, he was like somebody that maybe
20 was at the meeting the day that this was discussed, or
21 maybe -- maybe Sharp Equity had a relationship with
22 Scott --

23 Q. Okay.

24 A. -- and that's why he was a part of this. But he
25 would never come to the MOM's meetings.

KEVIN POTEPA, 7/11/2019

1 Q. Okay. If we go back to 1037 and you flip to the
2 page that says 4464.

3 A. 1037.

4 Q. 4464.

5 A. Okay.

6 Q. And you will see halfway down there is an email
7 from Denny Chittick --

8 A. Uh-huh.

9 Q. -- on Friday, May 20th. And if you skip to
10 point number 2 --

11 A. Okay.

12 Q. -- it says: Read and review the operating
13 agreement. If you are having a lawyer read it, and he
14 wants to make 100 little changes, we'll table this for
15 2012 because it was dragged it out. It's smart to have
16 someone review it, but unless there is a major point that
17 needs to be changed, try to reframe -- I think he meant
18 refrain -- from letting them re-word shit to make them
19 feel like they can rebill you.

20 In your interactions with Denny, did Denny ever
21 complain about lawyers or the legal profession?

22 A. I don't -- I don't think so. I mean, I don't
23 remember anything. And it -- I guess it's common sense in
24 my mind of reading this that obviously lawyers doing
25 things, it's expensive. So I think it was just common

KEVIN POTEPA, 7/11/2019

1 sense that: Hey, if we are making a bunch of changes in
2 this, then it's going to be a bunch of fixes that the
3 lawyer is going to charge extra for and all that. So I
4 think that was --

5 Q. Did you find that Denny was generally cost
6 conscious when it came to funding loans or interacting
7 business or transacting business?

8 A. I guess so.

9 Q. And what do you think of when you say "I guess
10 so"?

11 A. Well, he seemed to always be on top of things,
12 you know. We always knew where he was, as far as whether
13 he had money, whether he didn't have money. So I'm
14 assuming that since he was on top of his business, that he
15 also was on top of expenses, too.

16 Q. I see. Did Denny ever talk to you about lawyers
17 working for DenSco or working for him personally?

18 A. I think the only thing that ever came out was
19 just that he had lawyers set up his company and set up,
20 you know, the procedures for how he went about, like,
21 doing investor stuff, you know, on the investor side.

22 Q. On the investor side?

23 A. Right.

24 Q. Not on the borrower side?

25 A. Yeah, I guess so. I mean, I think the only

KEVIN POTEPA, 7/11/2019

1 thing that -- I think the only thing that ever came up was
2 on the investor side, if I remember.

3 Q. Do you remember when this conversation about
4 what the lawyers did would have happened?

5 A. I think it was only when we would, like, give
6 him money as an investor.

7 Q. Okay.

8 A. Right.

9 Q. So you think this conversation may have happened
10 when you initially became a DenSco investor?

11 A. Right.

12 Q. And just to be clear, you became a DenSco
13 investor after you were already borrowing money from
14 DenSco?

15 A. Yeah. And the way that came about and the way
16 that -- like I said, we were not risk takers --

17 Q. Uh-huh.

18 A. -- so -- but we did understand that if you are
19 able to get a good interest rate from DenSco, as an
20 investor, it made more sense than keeping the money in the
21 bank getting 1 percent.

22 Q. Right.

23 A. So for the most part, the only thing we really
24 did was, like, if we sold a personal residence, and we all
25 of a sudden had a bunch of money --

KEVIN POTEPA, 7/11/2019

1 Q. Uh-huh.

2 A. -- and we were renting a house for a year
3 looking for our next personal residence, we would -- there
4 was -- and I think that's the last time that we did do
5 anything with him. We didn't do a lot with him --

6 Q. Uh-huh.

7 A. -- on the investor side. I think we sold our
8 personal residence and we had this money and it was
9 sitting in there getting 1 percent. And we are like:
10 Denny, can you use this money, you know, for -- for a
11 couple months. And I think we only had it there for like
12 three months or something like that.

13 Q. Okay.

14 A. That was the extent, because even though we
15 weren't doing flips anymore, we were so concerned about
16 where the industry was going, because prices had come back
17 so quickly, that we didn't want to get stuck and caught up
18 in it again.

19 Q. Right.

20 A. So my wife was like: I don't like this. I know
21 we are getting income each month, but let's just put it in
22 the bank and be safe. So I think we only had it there
23 for, like, two or three months at the most.

24 Q. Okay. What -- how did you learn about the
25 investing side of DenSco?

KEVIN POTEPA, 7/11/2019

1 A. What do you mean "the investing side"?

2 Q. So you were a borrower first --

3 A. Right.

4 Q. -- and then you eventually decided to invest
5 with DenSco.

6 Is there something other than the fact that you
7 had this money and the fact that you were getting good
8 returns on DenSco that made you want to invest with
9 DenSco?

10 A. I think initially we did a couple small, like
11 50,000 or something like that --

12 Q. Uh-huh.

13 A. -- even though there was people doing a whole
14 bunch more than what we were doing.

15 Q. Okay.

16 A. I think what happened was I found it to be very
17 competitive to get properties, so there was -- and that
18 happened over time. So like during the crash, there were
19 so many properties, and you can get them but you couldn't
20 flip them.

21 Q. Uh-huh.

22 A. And then after the -- after the crash and all
23 those -- all that inventory was gone, then it became hard
24 to get houses.

25 Q. Yeah.

KEVIN POTEPA, 7/11/2019

1 A. So at that point we were like, man, I'm
2 competing against ten other people for this house each
3 time, and I'm not getting it because we were -- we were
4 low risk takers.

5 Q. Uh-huh.

6 A. So we wanted to make sure there was a certain
7 cushion in each house, and there was people that were
8 bidding way above what we were willing to do.

9 Q. Uh-huh.

10 A. So then there was a certain point, I mean, you
11 know what? If they are wanting to take some risk and we
12 can't get houses anymore, maybe what we should be doing is
13 the little money that we have, maybe we will give it to
14 Denny and have Denny lend it to those people that are
15 willing to only make 10,000 on a house or something.

16 Q. Right.

17 A. So -- but that didn't last long either, because
18 we were so low risk, that then we were thinking to
19 ourself: well, wait a second. He is loaning it to them.
20 There is not a lot of room in the property, because they
21 bid so high. Maybe that isn't so safe either.

22 So I don't think we -- I don't think we ever had
23 money with Denny longer than a couple months --

24 Q. Okay.

25 A. -- whenever we did it, because we would always

KEVIN POTEPA, 7/11/2019

1 talk ourself out of it and say, you know what? We just
2 don't feel comfortable leaving it there.

3 Q. Okay. Did you ever have any problems with your
4 investments?

5 A. You mean the money that we gave to Denny?

6 Q. Yes.

7 A. Not that I was aware of.

8 Q. Okay. Given that you were both a borrower and
9 investor of DenSco, did you ever have a concern that
10 DenSco -- and knowing both sides of the business --

11 A. Right.

12 Q. -- being exposed to him, did you ever have any
13 concern that DenSco was a one-man operation?

14 A. No. And I wasn't -- I wasn't concerned with
15 Denny. I was concerned with the market and where it was
16 going.

17 Q. And --

18 A. So that was the reason why there were times
19 where we woke up and said: Hey, let's get our money out
20 of here, because this -- we don't like where the market is
21 going. And obviously we were wrong, because it's still
22 going. So we just were not risk takers, and we thought
23 when we initially did it, it was a good safe thing.

24 Q. Right.

25 A. And then, you know, eventually we take it out.

KEVIN POTEPA, 7/11/2019

1 Q. And why weren't you concerned that Denny was
2 doing everything? He was the one administering all these
3 loans. You know, he is obviously --

4 A. Right.

5 Q. -- you know, dotting his I's, crossing his T's
6 on the loan side. There are lots of loans happening. I
7 mean, did it seem to you that it was a lot for one person
8 to do?

9 A. That never really came up in my mind.

10 Q. Okay.

11 A. I think because of the monthly meetings and
12 hearing him talk for that 15 minutes, 20 minutes at the
13 beginning of each meeting --

14 Q. Uh-huh.

15 A. -- that you had a sense that this is a very
16 intelligent person that was on top of things.

17 Q. Okay.

18 A. He was sharing all these statistics with you.
19 He was, you know, sharing where he was at with money. He
20 would -- at these monthly meetings, he would say: well, I
21 have 104 loans out for a total of this. This is how much
22 money I have right now available to be loaned out. Or
23 sometimes he will say, you know: I have no money right
24 now. I'm already -- you know, I've loaned out all I have
25 and I'm not taking any more investor money.

KEVIN POTEPA, 7/11/2019

1 So each month he would share, like, his status,
2 the market status --

3 Q. Uh-huh.

4 A. -- and you kind of had a sense that he was on
5 top of things. So I was never concerned about him.

6 Q. Right.

7 A. I was -- we were -- my wife and I were just more
8 concerned about the market and how -- how you can wake up
9 one morning and it changes.

10 Q. Right.

11 I noticed that you didn't interact with Denny
12 socially, but in your conversations with Denny, did Denny
13 ever talk to you about personal or family matters?

14 A. No. From going to his house --

15 Q. Uh-huh.

16 A. -- we knew that he had kids, because we would
17 see them.

18 Q. Uh-huh.

19 A. And I didn't even know that they got divorced
20 until like eight months after it happened or something.
21 And I was like: Really? That, I had no idea, because --

22 Q. And how did you learn about that divorce?

23 A. I think it was -- I think it was Denny's --
24 Denny's dad. Because I had said something like: Oh,
25 where is Ranasha? I don't see her.

KEVIN POTEPA, 7/11/2019

1 Oh, you didn't know? They separated. I'm like,
2 wow. Okay. When did that happen?

3 So that was -- that was kind of surprising to
4 me, but I guess the weird thing was that she was still
5 working at John Ray's office, still doing the same stuff
6 she was doing for DenSco before, but now they are no
7 longer married, and I'm like: Okay. This is really
8 weird, but okay.

9 Q. Did you -- so is it safe to say that Denny never
10 talked to you about his divorce?

11 A. Oh, for sure never did.

12 Q. Did you notice -- after learning of Denny's
13 divorce, did you notice any changes in his demeanor?

14 A. I don't think so. And I'm -- I'm trying to
15 recall when -- when that happened, and how much more time
16 we were even in the industry after that we learned.

17 Q. Uh-huh.

18 A. I mean, we may have only been in the industry
19 another year. I'm not sure. But I -- there was -- it was
20 something that was never discussed.

21 Q. I see.

22 And after you left the industry, did you stay in
23 touch with Denny?

24 A. Every once in a while I would call and I would
25 say, you know, what's going on with the industry, because

KEVIN POTEPA, 7/11/2019

1 I left something that I knew fairly well.

2 Q. Uh-huh.

3 A. And I was still kind of -- even though my wife
4 and I said let's just get out of this industry, prices
5 have come up too high, there is just not enough room in
6 flips anymore. And that's what we liked doing. We didn't
7 like holding properties as rentals. It was easy when
8 properties were \$40,000, but now that they are \$200,000 --

9 Q. Right.

10 A. -- we just didn't have that kind of money. So
11 it was kind of a struggle to find our next business.

12 Q. Uh-huh.

13 A. So I would every once in a while call Denny,
14 like every three months maybe, and say: Hey, what's going
15 on? What are you -- do you think this is still going to
16 keep going?

17 Because I always had second thoughts of should I
18 be staying in? There is all these people that are still
19 doing it.

20 Q. Right.

21 A. So I would call him and just kind of get his
22 take on how the market was, and: Are people flipping
23 houses right now?

24 Oh, yeah, they're flipping.

25 And I'm like: Wow. I can't believe they are

KEVIN POTEPA, 7/11/2019

1 still doing it. There is just no money in it.

2 So every three months, I would maybe call him.

3 Q. Right.

4 A. And we wouldn't talk about him or his kids or
5 anything. It would strictly be that, because I guess it
6 was just me trying to justify that I made the right
7 decision to get out of the industry.

8 Q. When was the last time you spoke to or saw
9 Denny, if you remember?

10 A. I'm sure I spoke to him less as opposed to
11 physically saw him.

12 Q. Uh-huh.

13 A. Because I think I physically saw him, he had
14 like an annual thing that he had at his house --

15 Q. The annual investor --

16 A. -- the annual investor thing, that -- I don't
17 think we went to the last one that he had, but we went to
18 the one before that. And I think that was the last time
19 that I physically saw him.

20 And the only time that I had communication with
21 him was just, like, every three months or every four
22 months or something like that. I would just call him and
23 say: Hey, how is the industry going? What are you seeing
24 there? Do you think it's ready to explode again, or, you
25 know, that's about it.

KEVIN POTEPA, 7/11/2019

1 Q. Do you recall when you first learned of Denny's
2 death?

3 A. Yeah. I remember the day distinctly.

4 Q. And tell me what you remember about that day?

5 A. Just in shock. I remembered Miller, Miller
6 Blanford was somebody that I became kind of -- I wouldn't
7 say friends, but, you know, we -- we talked a little bit
8 more than maybe some of the other investors that I talked
9 to. He was still doing what I guess I wanted to do, so
10 every once in a while I would call him, too, and say:
11 Hey, how's is going? Oh, it's going good.

12 So one day I got a call from Miller --

13 Q. Uh-huh.

14 A. -- saying that Denny had passed. And I was:
15 what are you talking about? And he -- and he told me
16 that -- that he passed. And at that point he didn't know
17 what happened.

18 Q. Uh-huh. When you say "what happened," you mean
19 how he died?

20 A. How he died.

21 Q. Okay.

22 A. So Miller had told me that he passed. And I
23 said: Geez. How did it happen? And he said: I don't
24 know yet. I'm still trying to get details.

25 And I'm like: well, geez. If you hear

KEVIN POTEPA, 7/11/2019

1 something, you know, let me know, you know, where the
2 services are going to be at and everything.

3 And I think -- I don't know if it was the next
4 day or the day after --

5 Q. Uh-huh.

6 A. -- or maybe it was three days later, I don't
7 know the timeframe, but it was within -- it was within a
8 week I'm pretty sure, Miller had called me again and
9 said -- told me what happened. How they -- I think it was
10 his dad that had found him.

11 Q. Uh-huh.

12 A. And I just -- I -- I just couldn't believe it.

13 Q. So there was nothing -- looking back now, there
14 was nothing in your interactions with Denny that
15 suggested, you know, that he would do something like this?

16 A. Oh, not at all. No. And I just remember
17 telling -- telling Miller at the time, I wish he -- I wish
18 you wouldn't have called me the second time.

19 Q. Yeah.

20 (Deposition Exhibit No. 1039 was marked for
21 identification.)

22 Q. So this appears to be an email that you sent on
23 August 4th. And just so you know, we think that Denny
24 died on July 28th. And it looks to be that, you know, you
25 are obviously processing what you heard.

KEVIN POTEPA, 7/11/2019

1 If you go to this first sentence of the second
2 paragraph, you say: I feel sad for all. He was a great
3 friend and business partner.

4 What was it about Denny that caused you to
5 define him as a great friend and business partner?

6 A. Well, and it was great -- I should have probably
7 been more specific, but at that point I wasn't, you know,
8 thinking that it was that important. But whenever you
9 called him as a borrower and you were going to try and
10 close this deal, he was always accessible.

11 Q. Uh-huh.

12 A. So that's what I meant by business partner.

13 Q. Uh-huh.

14 A. So at the critical times that you needed to
15 speak with him to see if he had money, see if he can, you
16 know, set aside 60,000 for next Thursday, he would always
17 take your call. So he was extremely reliable. So it
18 helped us as borrowers, as flippers, to know that the
19 reliability was always there.

20 Q. Uh-huh.

21 A. That it wasn't a case where you left a voicemail
22 and he would call you back two days later.

23 Q. Yeah.

24 A. That would never happen. And he was a great
25 business friend. So we never spent any time outside of

KEVIN POTEPA, 7/11/2019

1 business dealings, other than the MOM's meeting we hit
2 every month.

3 Q. Right.

4 A. We had talked several times about: You know, we
5 should maybe get out golfing. Never happened. And
6 sometimes you say stuff like that in those annual meetings
7 and it just never materializes --

8 Q. Right.

9 A. -- that you are going to go golfing one day or
10 something like that. I know that he golfed and I golfed,
11 but it never happened.

12 And what I mean by great friend, he is -- when
13 we had those MOM's meetings, he kind of treated everybody
14 as a friend.

15 Q. Uh-huh.

16 A. So even though we didn't do anything outside of
17 those meetings, he kind of held those meetings and treated
18 you during that two hours as a friend.

19 Q. So you alluded to this a little bit earlier,
20 but --

21 A. Let me shut this off.

22 Q. Oh, yeah. Go ahead.

23 A. Go ahead.

24 Q. So you had noted earlier that you thought one of
25 the reasons I was asking a question about Scott Menaged

KEVIN POTEPA, 7/11/2019

1 was because of what happened after Denny's death --

2 A. Right.

3 Q. -- or what people wanted to know.

4 what is your understanding of what Scott Menaged
5 did with regards to DenSco?

6 A. So -- so initially I heard from Miller about how
7 he died.

8 Q. Uh-huh.

9 A. And then nothing ever really came out of that
10 about Scott at the time. I think it was like six months
11 later or something like that where I called John Ray.

12 Q. Uh-huh.

13 A. And I said: John, how is the business going?
14 And, you know, since Denny wasn't around to call, I called
15 John Ray and said: Are people still flipping? Are you
16 still getting property at the trustee sale? And it was
17 the first time that I believe we had talked about what
18 happened to Denny.

19 Q. Uh-huh.

20 A. And I said: That is just unbelievable that he
21 did that.

22 Q. Uh-huh.

23 A. And then John had said something like: well, I
24 think it all happened because of what was going on with
25 Scott.

KEVIN POTEPA, 7/11/2019

1 And I'm like: what's that?

2 And he was telling me that Scott was doing like,
3 getting a hard-money loan from Denny and then getting
4 another hard-money loan from someone else. And I'm like:
5 How does that even happen? How do -- I mean, because
6 usually the hard-money guys are on top of things.

7 And so I remember John sharing this with me. I
8 don't know how he got that information, but John had
9 shared it to me. And I was like: wow. I can't -- I
10 can't believe that. Because Denny seemed to always be on
11 top of things.

12 Q. Uh-huh.

13 A. And I don't know if they keep doing the MOM's
14 meeting after I got out of the industry, and whether he
15 still did that with the rest of the group and whatnot.
16 I'm assuming that he did.

17 So that's how I found out from John -- from
18 calling John Ray. Like, I don't know the time. Maybe it
19 was four months later or something like that --

20 Q. Uh-huh.

21 A. -- or around there. So John was sharing with me
22 what he knew. And that's what he shared with me.

23 Q. Okay. We talked about this off the record a
24 little bit, but I told you that we had interviewed a
25 number of investors and we have also interviewed some

KEVIN POTEPA, 7/11/2019

1 family members and some business acquaintances. And
2 throughout the course of those depositions or
3 conversations, they have made various observations about
4 Denny, so I wanted to get your thoughts on those
5 observations.

6 A. Okay.

7 Q. And whether, in your experience, anything
8 corroborates their observations --

9 A. Okay.

10 Q. -- or whether you saw something --

11 A. All right.

12 Q. -- that was different.

13 Some have opined that money was important to
14 Denny.

15 Based on your relationship and observations of
16 Denny while he was alive, did you gain the impression that
17 money was important to him?

18 A. No. I just had the impression that he was
19 running a business that happened to have money loaning as
20 a part of that business.

21 He never really -- I remember when I used to
22 meet him for the MOM's meetings, when it was just him and
23 I, and I never knew what kind of car he had, and he had
24 like this old Lexus that was like ten years old.

25 Q. Uh-huh.

KEVIN POTEPA, 7/11/2019

1 A. And I'm like, wow. I was expecting him to have
2 like a Mercedes or something like that, you know, a new
3 Mercedes or something, because it seemed like he was
4 making a lot of money doing what he was doing.

5 Q. Uh-huh.

6 A. But I remember meeting him for lunch at the My
7 Big Fat Greek Restaurant --

8 Q. Uh-huh.

9 A. -- over in Chandler Fashion Square and him
10 pulling up in like a ten-year-old Lexus. And I'm like,
11 wow, okay. And I even remember saying that, you know, if
12 you ever -- he had like -- I don't know how many miles he
13 had on it, but he was like: Yeah, it's a great car. You
14 know. I was just always taken aback by that he probably
15 could have bought any car he wanted to.

16 Q. Uh-huh.

17 A. Because he was -- I was assuming he was making a
18 lot of money doing what he was doing, but he was driving
19 this ten-year-old Lexus, so...

20 Q. We have also heard from some that when Denny
21 made a decision or decided on a course of action, it was
22 difficult to get him to move to, you know, different
23 possibilities.

24 Is there anything in your experience with him
25 that gave you an impression that that was the case or it

KEVIN POTEPA, 7/11/2019

1 wasn't?

2 MR. STURR: Object to the form of the question.

3 Q. You can answer.

4 A. I don't think I was ever exposed enough to him
5 that -- that he was unwilling or willing. I guess, you
6 know, decisions he made about his business were his
7 business.

8 Q. Uh-huh.

9 A. And, you know, he never, like, told us what to
10 do or, you know, if it was related to a document or
11 something like that, then, yeah. If it was how he wanted
12 it done, that's how he did it, but we never -- I don't
13 recall anything, of me having a conversation with him
14 saying, you know, could we do it this way and him saying,
15 no, we can't. I mean, I don't recall ever having that
16 conversation.

17 Q. Okay. As an investor, do you recall receiving a
18 document called the Confidential Private Offering
19 Memorandum?

20 A. That may have been a document that we did like
21 right at the beginning when we were doing investing with
22 him. I think it was maybe a part of that requirement to
23 be an investor.

24 Q. Okay. It's 557. So this is the Confidential
25 Private Offering Memorandum, which is dated July 2011.

KEVIN POTEPA, 7/11/2019

1 Now that I have handed it to you, and obviously
2 you haven't read through it in the two seconds I have
3 given it to you --

4 A. Uh-huh.

5 Q. -- but does this look familiar to you?

6 A. I don't remember getting anything this large.

7 Q. Okay. So is it safe to say that your decision
8 to invest was not necessarily based on what was in this
9 document?

10 MR. STURR: Object to the form and foundation.

11 THE WITNESS: Correct.

12 Q. Okay.

13 A. Yeah.

14 Q. So as you sit here today, you don't recall any
15 specific representation in this document as being
16 important to why you invested in DenSco?

17 MR. STURR: Form and foundation.

18 THE WITNESS: No, because I think it was just --
19 it was being a borrower for a long time.

20 Q. Uh-huh.

21 A. And then having a little bit of money to put on
22 the other side temporarily until we found a property, you
23 know, that we were going to do something with.

24 So it wasn't -- this was not something that,
25 like, at the monthly meetings he would take out and say,

KEVIN POTEPA, 7/11/2019

1 hey, if anyone is interested in becoming an investor.

2 Never happened.

3 Q. Right.

4 A. My interest and my wife's interest was just to
5 get a higher interest rate for a small period of time and
6 while we had money idle. So then we would -- we called
7 Denny one day and said: Hey, since we are not able to --
8 since it's so competitive getting properties, can we just
9 put some of our money on the other side.

10 Q. Right.

11 But is it safe to say that based on your history
12 with Denny and the business that you had transacted with
13 him before you became an investor, that you thought your
14 money was in a good place when you parked it in DenSco?

15 MR. STURR: Object to form.

16 THE WITNESS: Yeah. And I think part of that
17 came from those annual, like, dinners that he would have.

18 Q. And how many of those did you attend?

19 A. Probably, like, four.

20 Q. Okay.

21 A. And just meeting other people that were outside
22 of the industry that just, like, gave him money --

23 Q. Uh-huh.

24 A. -- to use in his business and get the interest
25 rate.

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1 Q. Uh-huh.

2 A. And then I remember -- and being a golfer, I
3 remember that weisskopf was at one of these functions, and
4 I was like: Wow, I'm sure he did his homework. I'm sure
5 he looked into Denny and must have -- so that even gave me
6 a little bit more assurance that it must have been really
7 safe.

8 Q. Right.

9 A. And then the other thing was that like his --
10 his father was -- I believe his father had some money with
11 him and his uncle had some money with him, and all that
12 kind of gave us the feeling that it was a safer situation.

13 Q. Right. All right. And did you file a proof of
14 claim with the receiver?

15 A. What do you mean by that?

16 (Deposition Exhibit No. 1040 was marked for
17 identification.)

18 THE WITNESS: If you are saying that we -- no,
19 we didn't.

20 Q. Okay.

21 A. No.

22 Q. So I have handed you this General Obligation
23 Note and we see that it was issued in July of 2013 and it
24 matured at the end of January 2014.

25 A. Right.

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1 Q. And it's for \$500,000.

2 A. Uh-huh.

3 Q. Can you tell me, is this the situation you were
4 discussing earlier where you had sold a house?

5 A. Exactly. So this, all this money came from
6 selling our personal residence.

7 Q. Okay.

8 A. So that's how we got that money.

9 Q. And so from the records I have seen, this was by
10 far the largest investment that you made in DenSco.

11 A. Oh, for sure, yeah.

12 Q. And so this note matured in January of 2014.

13 A. Right.

14 Q. Did you keep your money in DenSco?

15 A. No.

16 Q. So you did pull it out early?

17 A. Right. So, like I mentioned, we were --
18 initially we were thinking, okay this is -- this is a safe
19 spot to put it and get some income on a monthly basis
20 until we find our next residence to put it in.

21 Q. Right.

22 A. And then after, like, two months we were, like,
23 really worried that we had all of our money in one spot.
24 Had nothing to do with Denny. It had everything to do
25 with the market --

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1 Q. Right.

2 A. -- and then having all of our money in one spot.
3 So we had taken some out, and I think we left,
4 like, 200 in for another month or two, and then took that
5 remaining money out, because we just -- I think at that
6 time we bought our next personal residence --

7 Q. Uh-huh.

8 A. -- so we needed some of that money to put down
9 on that.

10 Q. Got it.

11 A. So it was a very short period of time.

12 Q. And when you asked to pull your money out, was
13 there any issue with you receiving that money back from
14 DenSco?

15 A. No. Because I think when we did it, and it was
16 similar to the other ones that we had, too, that, like, we
17 would call Denny and say, you know: I don't think we can
18 keep it for the whole maturity.

19 Q. Uh-huh.

20 A. But if you -- if you want to use it for a couple
21 months until we find out next personal residence, or
22 something like that, to move it into as a down payment,
23 then, you know, that's fine. So he was fine with that.

24 Q. Okay. Have you seen a copy of what we believe
25 to be a note that Denny wrote to DenSco's investors just

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1 prior to his death?

2 A. I -- I wasn't an investor prior to his death. I
3 mean, I was out of it for years before that --

4 Q. Right.

5 A. -- so...

6 Q. While you were an investor with DenSco, did
7 Denny ever solicit any advice from you on any of his
8 business matters?

9 A. Never.

10 Q. Okay. As either an investor or borrower, do you
11 recall communicating with an attorney named David
12 Beauchamp?

13 A. No.

14 Q. Okay. Do you know who David Beauchamp is with
15 regards to this case?

16 A. Well, I think his name is on the document that
17 you had sent --

18 Q. Uh-huh.

19 A. -- to me, and that's the first time I have
20 noticed that name.

21 Q. Okay.

22 A. But I am aware of it now because it was on your
23 letter.

24 Q. Right. Okay.

25 okay. Those are all the questions I have.

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1 MR. STURR: I don't have any questions for you.

2 MS. PATKI: All right. So this concludes your
3 deposition. As I said --

4 MR. STURR: I think we should advise the witness
5 of his right to read and sign.

6 MS. PATKI: Right.

7 AS I said earlier, you are permitted to review
8 the deposition transcript when it's prepared, and as I
9 said, you can review it, and then if you have any
10 corrections you want to make, you can send them back --

11 THE WITNESS: Okay.

12 MS. PATKI: -- or you can waive that right.

13 THE WITNESS: Okay.

14 MS. PATKI: So what would you like to do?

15 THE WITNESS: I guess I can look at it first
16 before I waive it, so --

17 MS. PATKI: Great.

18 THE WITNESS: -- I guess I will look at it
19 first.

20 MS. PATKI: Okay. Do you have an email address
21 where I can send you the transcript?

22 THE WITNESS: Yeah. You can send it -- I still
23 have that email address for Princeville Group.

24 MS. PATKI: The Princeville?

25 THE WITNESS: Princevillegroup@yahoo.com.

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1 MS. PATKI: Okay. Then that's where I will send
2 it.

3 Thank you so much for your time today. I
4 appreciate your time.

5 THE WITNESS: You're welcome.

6 (11:30 a.m.)

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KEVIN POTEPA

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BE IT KNOWN that the foregoing proceeding was taken before me; that the witness before testifying was duly sworn by me to testify to the whole truth; that the questions propounded to the witness and the answers of the witness thereto were taken down by me in shorthand and thereafter reduced to typewriting under my direction; that the foregoing is a true and correct transcript of all proceedings had upon the taking of said deposition, all done to the best of my skill and ability.

I CERTIFY that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

- Review and signature was requested.
- Review and signature was waived.
- Review and signature was not requested.

I CERTIFY that I have complied with the ethical obligations in ACJA Sections 7-206(F)(3) and 7-206-(J)(1)(g)(1) and (2).

<u>Kelly Sue Oglesby</u>	7/21/2019
Kelly Sue Oglesby	Date
Arizona Certified Reporter No. 50178	

I CERTIFY that JD Reporting, Inc. has complied with the ethical obligations in ACJA Sections 7-206(J)(1)(g)(1) and (6).

<u>JD REPORTING, INC.</u>	7/21/2019
JD REPORTING, INC.	Date
Arizona Registered Reporting Firm R1012	