

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

\* \* \* \* \*

CLA PROPERTIES LLC, A  
CALIFORNIA LIMITED LIABILITY  
COMPANY,

Appellant,

vs.

SHAWN BIDSAL, AN INDIVIDUAL,

Respondent.

CLA PROPERTIES LLC, A  
CALIFORNIA LIMITED LIABILITY  
COMPANY,

Appellant,

vs.

SHAWN BIDSAL, AN INDIVIDUAL,

Respondent.

No. 86438 Electronically Filed  
Nov 03 2023 12:26 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

No. 86817

**APPELLANT'S APPENDIX**

**VOLUME 30**

Robert L. Eisenberg, Esq. (SBN 950)  
LEMONS, GRUNDY & EISENBERG  
6005 Plumas Street, Third Floor  
Reno, Nevada 89519  
(775) 786-6868  
[rle@lge.net](mailto:rle@lge.net)  
*Counsel for Appellant*

Todd E. Kennedy, Esq. (SBN 6014)  
KENNEDY & COUVILLIER  
3271 E. Warm Springs, Road  
Las Vegas, Nevada 89120  
(702) 605-3440  
[tkennedy@kclawnv.com](mailto:tkennedy@kclawnv.com)  
*Counsel for Appellant*

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## **EXHIBIT 267**

In the Matter Of:  
Bidsal, Shawn vs CLA Properties, LLC

ARBITRATION DAY 4

April 26, 2021

Job Number: 740644

1 JAMS  
2 \*\*\*\*\*  
3  
4 SHAWN BIDSAL, an individual, )  
5 Claimant/Counter-Respondent, )  
6 v. ) JAMS Ref. No. 1260005736  
7 CLA PROPERTIES, LLC, a )  
8 California limited liability )  
9 company, )  
Respondent/Counterclaimant. )  
10  
11  
12  
13  
14  
15 DAY 4  
16 ARBITRATION  
17 BEFORE DAVID WALL, ESQ., ARBITRATOR  
18 LAS VEGAS, NEVADA  
19 MONDAY, APRIL 26, 2021  
20  
21 Reported By Kele R. Smith, NV CCR No. 672, CA CSR No.  
22 13405 LIT Job No. 740644  
23  
24  
25



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1 JAMS ARBITRATION,  
2 taken at 3800 Howard Hughes Parkway, Eleventh Floor, Las  
3 Vegas, Nevada, on Monday, April 26, 2021, at 8:57 a.m.,  
4 before Kele R. Smith, Certified Court Reporter, in and  
5 for the State of Nevada.

6

## 7 APPEARANCES:

8 For the Claimant/Counter-Respondent Shawn Bidsal:

9 SMITH & SHAPIRO, PLLC  
10 BY: JAMES E. SHAPIRO, ESQ.  
3333 East Serene Avenue  
Suite 130  
11 Las Vegas, Nevada 89074  
(702) 318-5033  
12 jshapiro@smithshapiro.com

13 GERRARD, COX & LARSEN  
14 BY: DOUGLAS D. GERRARD, ESQ.  
2450 Saint Rose Parkway  
Suite 200  
15 Henderson, Nevada 89074  
(702) 796-4000  
16 dgerrard@gerrard-cox.com

17 For the Respondent/Counterclaimant CLA Properties:

18 LAW OFFICES OF RODNEY T. LEWIN, APC  
19 BY: RODNEY T. LEWIN, ESQ.  
8665 Wilshire Boulevard  
Suite 210  
20 Beverly Hills, California 90211  
(310) 659-6771  
21 rod@rtlewin.com  
(702) 314-7200

22

Also Present:

23

24 SHAWN BIDSAL  
BENJAMIN GOLSHANI

25

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1 LAS VEGAS, NEVADA; MONDAY, APRIL 26, 2021

2 8:57 A.M.

3 -oOo-

4 ARBITRATOR WALL: Okay. We're back on the  
5 record. Appearances for the record, please?

6 MR. GERRARD: Douglas Gerrard and Jim Shapiro on  
7 behalf of Shawn Bidsal. Mr. Bidsal is present.

8 MR. LEWIN: Rodney Lewin, Louis Garfinkel, and  
9 Mr. Golshani and Spencer Lewin attending remotely on  
10 behalf of CLA.

11 ARBITRATOR WALL: Spencer Lewin is who?

12 MR. LEWIN: My assistant.

13 ARBITRATOR WALL: All right. We had left off  
14 with Mr. Gerety, although I don't know if we just took  
15 him out of order.

16 MR. GERRARD: We took him out of order.

17 ARBITRATOR WALL: Because I'm not sure the  
18 claimant had actually rested. So have you guys agreed  
19 on who is testifying today and when and how, or what  
20 have we got?

21 MR. LEWIN: We talked about it, but I don't think  
22 we have an agreement yet.

23 MR. GERRARD: Well -- I'm sorry.

24 MR. LEWIN: I think the discussion I had with  
25 Mr. Gerrard was that he said he wanted to offer some of

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08:58:50 1 Mr. Main's testimony.

08:58:53 2 ARBITRATOR WALL: Deposition testimony?

08:58:55 3 MR. LEWIN: Deposition testimony.

08:58:56 4 ARBITRATOR WALL: Okay.

08:58:57 5 MR. LEWIN: I said whatever he does, he has to

08:59:00 6 proceed and rest, and I don't think we have an agreement

08:59:03 7 on that yet.

08:59:05 8 MR. GERRARD: Yeah, sure, Judge Wall. It's

08:59:08 9 pretty simple. I told you at the end of the last time

08:59:11 10 we were here, you asked Mr. Lewin who his witnesses were

08:59:15 11 for today and what we have left. I told you we have

08:59:19 12 deposition testimony of Jim Main that we wanted to read

08:59:22 13 into the record, but that if we ran out of time, you

08:59:22 14 know, so that there wasn't time to read it into the

08:59:27 15 record, we would tell you where it was so you could read

08:59:29 16 it yourself. So essentially I told Mr. Lewin that same

08:59:31 17 thing. Be ready to go with your witnesses on Monday

08:59:34 18 morning because we're going to put that on, essentially

08:59:38 19 last, if there's time. If there's not, then we'll --

08:59:41 20 ARBITRATOR WALL: That's the only thing you have

08:59:42 21 left?

08:59:44 22 MR. GERRARD: That's the only thing we have left.

08:59:45 23 We have the right for rebuttal, so I'm not going to say

08:59:49 24 that we won't put anything else on, but as far as our

08:59:52 25 case in chief, yes.

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08:59:53 1 MR. LEWIN: First of all, I think they should put Page 991  
08:59:56 2 on their case and rest. If he chooses to read instead  
09:00:00 3 of putting in deposition transcripts or citations,  
09:00:03 4 that's his choice. We have a cross-complaint, a  
09:00:07 5 cross-claim, so in theory we both have rebuttal. I  
09:00:11 6 thought they'd put their case on and we'd put on our  
09:00:15 7 case and that would be the end of it.  
09:00:17 8 Talking about Mr. Main, we object to reading any  
09:00:20 9 part of his testimony. His deposition was not  
09:00:23 10 completed. As you remember, he, in the middle of the  
09:00:26 11 deposition, announced that he had to leave at 1 o'clock  
09:00:31 12 or 1:15.  
09:00:33 13 ARBITRATOR WALL: Well, actually, it was closer  
09:00:34 14 to the beginning.  
09:00:36 15 MR. LEWIN: It was after a first break. I have  
09:00:38 16 that.  
09:00:39 17 ARBITRATOR WALL: It started about 9:23 a.m. and  
09:00:42 18 somewhere between 11:00 and 11:15 he said he had to  
09:00:47 19 leave at 1:15. You finished with him about 1:05 and  
09:00:52 20 gave -- I don't know if -- gave Mr. Gerrard about 20  
09:00:56 21 minutes.  
09:00:56 22 MR. LEWIN: It was me. I didn't finish.  
09:01:00 23 ARBITRATOR WALL: You stopped.  
09:01:01 24 MR. LEWIN: As a matter of courtesy, I wanted to  
09:01:03 25 give Mr. Gerrard an opportunity to ask some questions.

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09:01:07 1 ARBITRATOR WALL: Then there was a motion to  
09:01:09 2 reschedule it. He, through counsel, had offered to  
09:01:11 3 submit to written questions pursuant to -- is it 31 --  
09:01:18 4 NRCP 31, I think. I denied the request to basically  
09:01:28 5 force him to be deposed again after he had indicated he  
09:01:32 6 had scheduling issues and couldn't accommodate that. He  
09:01:37 7 was subpoenaed to appear. His lawyer, about a week  
09:01:41 8 before the last hearing, sent an objection to the  
09:01:52 9 subpoena. I left it open for about a week. No one  
09:01:55 10 responded to the objection. No one -- I presumed it  
09:02:04 11 was -- as did Mr. Main's attorney, presumed that the  
09:02:07 12 objection was not going to be addressed by anyone and  
09:02:11 13 wasn't opposed, and that's where we were.

09:02:14 14 MR. LEWIN: So my point is is that the  
09:02:15 15 deposition -- forgetting about the subpoena issue,  
09:02:18 16 because if he was here, he would be here. But the  
09:02:22 17 deposition by itself is incomplete. I didn't have a  
09:02:25 18 chance to cross-examine him with respect to -- finish my  
09:02:29 19 examination of him, and I didn't have a chance to  
09:02:32 20 cross-examine him with respect to what Mr. Gerrard said.

09:02:35 21 So the issue -- Mr. Gerrard had the ability to  
09:02:38 22 subpoena him. I thought they had a subpoena issued for  
09:02:41 23 him as well. Maybe my memory is mistaken. But I  
09:02:46 24 thought I remembered that they also had a subpoena  
09:02:48 25 issued for him. The bottom line is is the deposition is

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09:02:51 1 incomplete and reading it would be improper, I believe. Page 993  
09:02:54 2 Any part of it.  
09:02:55 3 ARBITRATOR WALL: Have you given Mr. Lewin the  
09:02:58 4 designations of the portions that you want to read in?  
09:03:01 5 MR. GERRARD: No.  
09:03:04 6 ARBITRATOR WALL: Are they from Mr. Lewin's  
09:03:07 7 questioning or from yours?  
09:03:09 8 MR. GERRARD: Both. Most from him. I obviously  
09:03:12 9 only asked like 20 minutes of questions. Most of it is  
09:03:16 10 from his own questioning.  
09:03:18 11 ARBITRATOR WALL: Okay. So that portion, of  
09:03:19 12 course, there's no need for -- there's no issue about  
09:03:22 13 incompleteness if it's the questions you asked and the  
09:03:26 14 answers you obtained.  
09:03:27 15 MR. LEWIN: But I wasn't finished with him. The  
09:03:31 16 point of the matter is that if Mr. Main says something  
09:03:33 17 that I know is incorrect but I want to lead him down and  
09:03:37 18 let him take a position -- because I believe and I think  
09:03:39 19 the evidence will show that Mr. Main is biased for  
09:03:43 20 Mr. Bidsal, who has many, many relationships and has  
09:03:48 21 basically ignored my client for many years.  
09:03:50 22 So the point being is the fact that I start with  
09:03:52 23 the deposition. I let him testify on some issues.  
09:03:57 24 Don't get to documents or testimony that I think might  
09:04:00 25 contradict some of his testimony. I don't know what



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09:04:02 1 he's talking about here.

09:04:04 2 ARBITRATOR WALL: You don't even know the areas  
09:04:06 3 that he's talking about to know whether it's complete or  
09:04:09 4 not.

09:04:09 5 MR. LEWIN: That is right.

09:04:11 6 ARBITRATOR WALL: So if you asked him questions  
09:04:12 7 for 15 minutes on a topic, moved on to another topic --  
09:04:16 8 especially, I suppose, if it was before 11:15 or  
09:04:21 9 whenever he announced that he only had half a day. So I  
09:04:26 10 guess I can't really address it now because you can't  
09:04:30 11 address it now because we don't know what the portions  
09:04:33 12 are that are sought to be designated.

09:04:33 13 MR. LEWIN: Well, maybe we can --

09:04:35 14 ARBITRATOR WALL: At the first break I would ask  
09:04:41 15 if you can provide Mr. Lewin, Mr. Garfinkel with that  
09:04:49 16 information so that -- and I suppose me, so that I can  
09:04:54 17 address that.

09:04:55 18 Now, I'm not going to -- if we have other  
09:04:57 19 witnesses who are ready to go, I'm going to reserve to  
09:05:00 20 them the fact that they haven't rested yet until we can  
09:05:04 21 work out this deposition issue.

09:05:06 22 MR. LEWIN: That seems fair, Your Honor.

09:05:09 23 ARBITRATOR WALL: All right. Thanks.

09:05:10 24 MR. LEWIN: This is a matter of schedules.

09:05:13 25 Spencer tells me he can't hear anything. There's no

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09:05:15 1 sound. Are you able to allow him to have sound?

09:05:22 2 ARBITRATOR WALL: Oh. All right. Hold on.

09:05:28 3 That's going to be feedback. He can't hear anything?

09:05:35 4 MR. LEWIN: He said there's no sound. Usually

09:05:39 5 when I'm talking he prefers no sound.

09:05:43 6 ARBITRATOR WALL: Well, I mean, the main system

09:05:46 7 is up, so the room audio is on. I don't know maybe if

09:05:54 8 it's his computer because this -- the room is not muted.

09:06:00 9 MR. LEWIN: Okay. Let me --

09:06:07 10 ARBITRATOR WALL: And the volume is almost all

09:06:09 11 the way up.

09:06:11 12 MR. LEWIN: So scheduling, my intention is to

09:06:13 13 proceed with Mr. Golshani. I have a number of

09:06:16 14 first-party witnesses that I've scheduled because

09:06:20 15 they're Zoom witnesses.

09:06:21 16 I have Jeff Chain scheduled for 11 o'clock. I

09:06:26 17 may want to interrupt -- my plan is to interrupt

09:06:30 18 Mr. Golshani if that were the case, if he is on, to take

09:06:32 19 him.

09:06:32 20 I have Ms. Schindler from JPMorgan who will be

09:06:36 21 about ten minutes at 1:30.

09:06:38 22 I have David LeGrand at 1:40.

09:06:41 23 And we have Henry Manabat currently at 3 o'clock.

09:06:47 24 We'll push him back depending on where we are.

09:06:52 25 ARBITRATOR WALL: Okay. All right. So then

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09:06:52 1 let's begin with Mr. Golshani.

09:07:26 2 Mr. Golshani, will you -- oh. Go ahead.

3 Whereupon,

4 BEN GOLSHANI,

5 having first been called as a witness, was duly sworn

6 and testified as follows:

7

8 EXAMINATION

9 BY MR. LEWIN:

09:07:42 10 Q. Mr. Golshani, I'd like to go over a little bit of

09:07:47 11 your background. When were you born?

09:07:50 12 A. I was born in 1950.

09:07:54 13 Q. And that makes you 71, approximately?

09:07:58 14 A. Yes, sir.

09:08:00 15 Q. And could you please explain to His Honor -- let

09:08:07 16 me go back.

09:08:07 17 When did you come to the United States?

09:08:09 18 A. I came to the United States in 1979.

09:08:12 19 Q. And would you outline your educational background

09:08:23 20 for us, please?

09:08:24 21 A. Yes. I have a BS degree and MS degree in civil

09:08:30 22 engineering and structural engineering.

09:08:39 23 Q. And where did you receive that degree?

09:08:43 24 A. I received it in University of Tabriz in Iran.

09:08:50 25 Q. And since you've been to the United States, have

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09:08:55

1     **you had any further education?**

09:08:57

2           A.   Yes.   I took courses in extension items that I

09:09:04

3   needed and courses.

09:09:07

4           **Q.   And when you came to the United States, would you**

09:09:11

5   **outline your work experience from that time?**

09:09:19

6           A.   From when I came to the United States?

09:09:21

7           **Q.   Yes.**

09:09:22

8           A.   I started working for consulting engineers and

09:09:28

9   then contractors, and later on I joined the government,

09:09:36

10   City of Long Beach, and I worked there for some time

09:09:43

11   supervising construction and designing structures and

09:09:48

12   buildings.

09:09:49

13          **Q.   And were you doing the same type of work,**

09:09:52

14   **designing and supervising construction and designing**

09:09:56

15   **buildings when you were working for contractors?**

09:09:59

16          A.   In the Port of Long Beach?

09:10:00

17          **Q.   Before you started working for Long Beach or Los**

09:10:04

18   **Angeles, were you doing the same type of work?**

09:10:07

19          A.   About the same, yes, sir.

09:10:08

20          **Q.   And English is your second language.   Right?**

09:10:11

21          A.   That's correct.

09:10:12

22          **Q.   And when you did work for the City of Long Beach,**

09:10:17

23   **what did you do specifically?**

09:10:19

24          A.   As I said, I designed buildings.   I oversaw the

09:10:25

25   construction, supervision of the construction, and

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09:10:32 1 contracts. I granted contract bidding, things like  
09:10:39 2 that.

09:10:39 3 **Q. What department in the City of Long Beach were**  
09:10:42 4 **you in?**

09:10:42 5 A. I was in the department of design and  
09:10:44 6 construction.

09:10:45 7 **Q. Okay. And when you worked for Los Angeles, which**  
09:10:49 8 **department were you in?**

09:10:50 9 A. City of Los Angeles, I worked there in the  
09:10:56 10 department of building and safety.

09:10:59 11 **Q. Doing what?**

09:11:01 12 A. Checking plans, checking building plans.

09:11:06 13 **Q. And at some point in time, did you open your own**  
09:11:13 14 **business?**

09:11:13 15 A. Yes. After I worked a few years in city of Long  
09:11:18 16 Beach, I decided to work for myself.

09:11:23 17 **Q. And what kind of business did you open?**

09:11:25 18 A. I joined with some of my friends who were  
09:11:35 19 doing -- who were doing apartment buildings, and we  
09:11:38 20 would buy vacant land or tear down a building and get  
09:11:46 21 proper zoning and rebuild apartments and then subdivided  
09:11:51 22 them into condominiums and sold them.

09:11:54 23 **Q. In terms of the subdivision, what was your**  
09:11:56 24 **responsibility?**

09:11:57 25 A. Well, my responsibility was to check -- the civil

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09:12:04 1 engineer was doing the subdivision -- to check and read  
09:12:09 2 the CC&R and see if it is done the way we want.

09:12:14 3 **Q. And so at some point in time, did you open up a**  
09:12:23 4 **textile company?**

09:12:24 5 A. Yes. There was a downturn in construction and  
09:12:30 6 real estate, and I had friends in the textile. I had  
09:12:37 7 visited them a few times and I became interested, so  
09:12:42 8 they offered me a partnership and I accepted. And  
09:12:48 9 little by little I got more involved and I got  
09:12:52 10 interested in that business. It was both fun and it was  
09:12:56 11 a business, so I started doing textiles.

09:13:03 12 **Q. Did you ultimately open up a company called**  
09:13:08 13 **Noveltex?**

09:13:09 14 A. Yes. I formed a company called Noveltex,  
09:13:13 15 Incorporated.

09:13:14 16 **Q. When did you do that?**

09:13:15 17 A. I believe it was 1993.

09:13:18 18 ARBITRATOR WALL: Can you spell the business?

09:13:20 19 THE WITNESS: Pardon me?

09:13:22 20 ARBITRATOR WALL: Can you spell the name of the  
09:13:24 21 business?

09:13:24 22 THE WITNESS: Yes. N-O-V-E-L-T-E-X and then the  
09:13:30 23 next word is I-N-C, Incorporated.

09:13:30 24 BY MR. LEWIN:

09:13:35 25 **Q. Describe to us generally what the business of**

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09:13:38 1 **Noveltex is.**

09:13:40 2 A. The business of Noveltex is to -- I was

09:13:45 3 interested in environmentally friendly materials, so I

09:13:55 4 went into that area, and I would bring material from

09:13:59 5 Europe and from China. I went there and visited many

09:14:05 6 mills in also Russia and picked some mills and started

09:14:14 7 learning and hiring consultants as to know what to

09:14:20 8 order. And I -- so I ended up bringing raw fabric to

09:14:29 9 the United States, and in the United States I would dye

09:14:33 10 and print them. So I had a design team to pick the

09:14:39 11 designs, and we prepared fabric suitable for garment

09:14:50 12 manufacturers.

09:14:51 13 **Q. It's a fabric business?**

09:14:53 14 A. Yes, sir.

09:14:54 15 **Q. Okay. What kind of fabric particularly?**

09:15:00 16 A. Linen from flax.

09:15:02 17 **Q. And you still have that business?**

09:15:04 18 A. Yes.

09:15:04 19 **Q. And in 20 -- let's talk about the period from**

09:15:12 20 **2012 to 2016. Did your business require you to travel?**

09:15:16 21 A. A lot of travel.

09:15:18 22 **Q. What kind of travel were you required to do?**

09:15:21 23 A. Well, I traveled to negotiate business and I

09:15:30 24 would check the production line, and I --

09:15:36 25 **Q. I just want to know where you were traveling and**

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09:15:40

1     **how long you were traveling.**

09:15:41

2           A.   You mean which countries?

09:15:43

3           **Q.   Which countries, how often would you go?   How**

09:15:47

4     **often would you be traveling out of Los Angeles for**

09:15:50

5     **business during the time period from 2012 to 2016?**

09:15:53

6           A.   Well, in the 2012 to 2016, probably I would

09:16:01

7     travel overseas three, four times a year.

09:16:05

8           **Q.   And did you have other businesses during that**

09:16:09

9     **same time period?**

09:16:10

10          A.   Yes, I had other businesses.

09:16:13

11          **Q.   What were the other businesses?   Forgetting about**

09:16:17

12     **businesses you had with Mr. Bidsal.**

09:16:20

13          A.   Yes.   I had other companies who were dealing with

09:16:31

14     properties, purchasing property and managing them, and

09:16:39

15     some of them were in distress situation, needed repair,

09:16:43

16     so I would do the plan and I would hire contractor to

09:16:48

17     renovate them and bring tenants.   Things like that.

09:16:55

18          **Q.   Did those other businesses require travel as**

09:16:58

19     **well?**

09:16:58

20          A.   Yes.   They were in other states like Arizona, so

09:17:06

21     it required a lot of my attention.

09:17:09

22          **Q.   Now, in Noveltex in 2012, how many employees did**

09:17:21

23     **you have?**

09:17:21

24          A.   I had about 20 employees.

09:17:24

25          **Q.   What was Noveltex's address?**



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09:17:29 1 A. Noveltex's address is 2801 South Main Street in  
09:17:35 2 downtown Los Angeles.

09:17:36 3 Q. And is that where CLA's office is as well?

09:17:40 4 A. Correct. Yes.

09:17:41 5 Q. Were all of your business activities operated out  
09:17:45 6 of that Main Street address?

09:17:47 7 A. Yes.

09:17:47 8 Q. In 2012, can you tell us how many different  
09:17:52 9 properties you owned without giving a specific -- that  
09:17:55 10 were commercial properties?

09:17:56 11 A. In 2012. You know, I had invested in other  
09:18:09 12 property, I believe, in Las Vegas in 2010 and then I had  
09:18:20 13 some rental property, and that was about it.

09:18:26 14 Q. When you say "rental property," what kind of  
09:18:32 15 property was it?

09:18:33 16 A. It was condominiums that I would buy and rent it.

09:18:36 17 Q. Did you acquire any other commercial real estate  
09:18:39 18 properties, not including the ones you had with  
09:18:43 19 Mr. Bidsal?

09:18:44 20 A. Yes.

09:18:44 21 Q. Before December 31, 2016?

09:18:47 22 A. Yes. Yes.

09:18:50 23 Q. What other properties were those?

09:18:52 24 A. Before 2016, I had a few properties. I had  
09:19:00 25 acquired a few properties, as I said. Mostly distressed

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09:19:06 1 in city of Phoenix, and I had been working on those.

09:19:14 2 Q. And were you managing those properties, the

09:19:18 3 commercial properties?

09:19:18 4 A. Yes.

09:19:19 5 Q. For example, in the Phoenix property, what kind

09:19:23 6 of property is that?

09:19:24 7 A. Well --

09:19:26 8 Q. I just want to know is it a shopping center?

09:19:30 9 Apartment building?

09:19:30 10 A. One is an office building, and the other one is a

09:19:35 11 shopping center.

09:19:36 12 Q. And were you managing those properties?

09:19:39 13 A. Not personally. I have property manager, but I

09:19:49 14 make sure that everything is in order.

09:19:51 15 Q. So let's talk about Mr. Bidsal. How do you know

09:19:58 16 Mr. Bidsal?

09:19:59 17 A. I knew Mr. Bidsal, you know, from a long time

09:20:05 18 ago. We are relatives. He is my cousin.

09:20:10 19 Q. First cousin?

09:20:11 20 A. Yes. First cousin.

09:20:13 21 Q. And he's related to which of your brothers and

09:20:15 22 sisters?

09:20:16 23 A. His mother is my father's sister.

09:20:21 24 Q. And when did you first meet him? Where were you?

09:20:31 25 A. I met him when he was a very young boy. Long

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09:20:35 1 time ago. You know, when you have family gathering, we  
09:20:43 2 meet.

09:20:43 3 **Q. Now, at some point in time, did you become**  
09:20:48 4 **friendly with him in the United States?**

09:20:50 5 A. Yes.

09:20:51 6 **Q. And when was that?**

09:20:52 7 A. Sometime in 2009, 2010 we met again and we  
09:21:07 8 started talking.

09:21:08 9 **Q. Is it fair to say before that time while you were**  
09:21:11 10 **in the United States you did not have any kind of real**  
09:21:15 11 **relationship with him, other than being family members?**

09:21:18 12 A. No.

09:21:18 13 **Q. Is that yes?**

09:21:19 14 A. No. We didn't -- I know of him and probably he  
09:21:25 15 knew of me, but we were not in contact.

09:21:28 16 **Q. And at a point time did you and Mr. Bidsal start**  
09:21:33 17 **talking about business matters, real estate matters?**

09:21:36 18 A. At one point?

09:21:38 19 **Q. Yes.**

09:21:39 20 A. It was 2010.

09:21:43 21 **Q. And how did that come about?**

09:21:45 22 A. Well, we met at a family gathering, and he was  
09:21:53 23 talking about his investment and dealing in Las Vegas,  
09:22:00 24 and he thought that that was a very good -- I mean, it's  
09:22:09 25 a very good place to invest. I did have an investment

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09:22:17 1 about that time also, so we had something in common, and  
09:22:23 2 we started talking about general business.

09:22:31 3 **Q. And after that, are you able to tell us when in**  
09:22:36 4 **2010 this took place?**

09:22:38 5 A. The meeting?

09:22:40 6 **Q. When you said you had a family gathering. Can**  
09:22:45 7 **you pinpoint that?**

09:22:46 8 A. Probably was, you know, early 2010 sometime.

09:22:51 9 **Q. And after that meeting, did you do anything to**  
09:22:57 10 **further investigate real estate opportunities in Las**  
09:23:00 11 **Vegas?**

09:23:00 12 A. As I said, we -- I had -- I was investing, and  
09:23:10 13 generally when you're investing in a place, you would  
09:23:13 14 research that place. I did.

09:23:17 15 **Q. When was the next time that you had any**  
09:23:19 16 **discussions with Mr. Bidsal about business**  
09:23:24 17 **opportunities?**

09:23:24 18 A. Well, when at that family gathering, as I said,  
09:23:33 19 he was talking about investment, and, you know, we  
09:23:39 20 started talking to each other. So at the end he told me  
09:23:45 21 when -- I told him that I'm coming to Vegas. He said,  
09:23:49 22 "Next time you are there, give me a call." And you  
09:23:54 23 know, a few months probably passed and then one time I  
09:23:58 24 came here with one of my friends, and I called him and  
09:24:03 25 he happened to be here, so I -- he gave me his address.

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09:24:11

1 I went there to visit him and say hello and, you know,

09:24:15

2 talk or have a coffee. Things like that.

09:24:18

3 **Q. And from that point on, did your relationship**

09:24:25

4 **with Mr. Bidsal grow in terms of friendliness?**

09:24:29

5 A. Yes. We -- at that time we went and he showed me

09:24:37

6 some of his projects, and then we talked a lot about

09:24:44

7 other matters, about family and about philosophy and a

09:24:50

8 lot of things, and after that we had -- we would have a

09:24:56

9 meeting and, yeah, it developed to a friendship.

09:25:03

10 **Q. Did your family and his family socialize**

09:25:06

11 **together?**

09:25:06

12 A. Yes. I introduced our family to each other and

09:25:11

13 they became very -- they hit it off. They became very

09:25:16

14 good friends and we would do a lot of events, four of

09:25:20

15 us. We would go to different cities, places, and for

09:25:25

16 lunch, dinner.

09:25:27

17 **Q. And what's the time period we're talking about**

09:25:30

18 **now?**

09:25:30

19 A. I'm talking about mid-2010.

09:25:36

20 **Q. Did there come a time in mid-2010 when you**

09:25:40

21 **discussed entering into a possible business relationship**

09:25:45

22 **with Mr. Bidsal?**

09:25:46

23 A. Yes.

09:25:46

24 **Q. And when was that?**

09:25:48

25 A. I don't remember the exact time, but during all

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09:25:54 1 of these gathering and talks, he was talking that  
09:26:01 2 because of the -- those downturn of economy and real  
09:26:08 3 estate, he said that things are not doing good and --  
09:26:13 4 but he said he thinks that very soon it is going to be  
09:26:21 5 over and there is going to be a return and everything  
09:26:24 6 would be good, and it is a good idea to invest at that  
09:26:30 7 time.

09:26:30 8 And he said that because of the economy, he was  
09:26:36 9 short in cash and he was looking for investor, and after  
09:26:41 10 a few time -- at that time, I had a lot of liquidity on  
09:26:49 11 the money -- my money and relative money. And one of  
09:26:53 12 those incidences that, you know, he was talking about  
09:26:57 13 the opportunity and him wanting to participate, but he  
09:27:04 14 was short on cash I said, "You know, I have a lot of  
09:27:08 15 cash, and if you like, we can work together."

09:27:13 16 **Q. Okay. I want to put some time frame here. Do**  
09:27:18 17 **you remember when this conversation took place?**

09:27:20 18 A. It was, like I said, 2010.

09:27:24 19 **Q. But was it beginning? Middle?**

09:27:27 20 A. Middle.

09:27:28 21 **Q. Okay. And when Mr. Bidsal was talking about real**  
09:27:32 22 **estate opportunities, did he describe to you what he**  
09:27:36 23 **thought the real estate opportunities were?**

09:27:39 24 A. Yes.

09:27:39 25 **Q. What were the real estate opportunities that you**

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09:27:41 1 and he were talking about investing in?

09:27:43 2 A. He was telling me that the market in Las Vegas is

09:27:52 3 distressed at that time. There is a lot of

09:27:55 4 foreclosures. There are a lot of nonperforming loan

09:27:59 5 notes that we can buy and invest. My partners on the

09:28:08 6 property --

09:28:10 7 Q. I just want to talk about what you and Mr. Bidsal

09:28:13 8 talked about.

09:28:14 9 A. All right.

09:28:15 10 Q. So you're talking about possibly buying

09:28:18 11 distressed properties and nonperforming loans. Is that

09:28:22 12 it?

09:28:22 13 A. That's right.

09:28:23 14 Q. So did you and he discuss how you could invest in

09:28:30 15 distressed properties or nonperforming loans?

09:28:33 16 A. We did discuss, yes.

09:28:34 17 Q. And what was said between you and him about that?

09:28:39 18 A. In term of how to do it?

09:28:42 19 Q. Yeah. How would you go about it?

09:28:45 20 A. How do we go about it? We decided to become

09:28:51 21 partners, and he told me that he has -- he has to work

09:29:02 22 on --

09:29:03 23 Q. I'm not going to that part yet. How would you go

09:29:08 24 about -- what kind of investments were you going to look

09:29:11 25 for and --

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09:29:12 1 A. Oh. We were going to invest in nonperforming  
09:29:19 2 loan and distressed properties because we had ability  
09:29:24 3 to -- if they needed construction, to take care of them.

09:29:29 4 Q. So at some point in time had you and he reached  
09:29:33 5 an agreement as to how you would proceed with the  
09:29:36 6 business relationship?

09:29:37 7 A. Yes, we did.

09:29:38 8 Q. And had you discussed how you would go about  
09:29:44 9 locating either distressed properties or nonperforming  
09:29:49 10 loans before you made that decision?

09:29:51 11 A. Yes.

09:29:51 12 Q. And what was that discussion, please?

09:29:54 13 A. He said that he knows a lot of brokers in Vegas  
09:30:00 14 and in other cities in California that is active and  
09:30:06 15 they bring him good deals, and he talked about buying  
09:30:15 16 properties in auction. There were different companies  
09:30:20 17 that were offering both properties: distressed  
09:30:28 18 properties and nonperforming notes. Those are the  
09:30:34 19 things that he told me that he could do.

09:30:41 20 Q. Was there a point in time when you and Mr. Bidsal  
09:30:44 21 agreed to the terms of your partnership and proceeding?

09:30:49 22 A. Yes.

09:30:50 23 Q. And can you tell us when and give us an  
09:30:54 24 approximate time frame about when that was?

09:30:56 25 A. Well, it was, you know, in 2010. Sometime in



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09:31:07 1 June, July. In the summer.

09:31:09 2 Q. And did you and he discuss the terms of what the  
09:31:13 3 relationship would be?

09:31:15 4 A. Yes.

09:31:15 5 Q. And tell us what you and he agreed on in terms of  
09:31:20 6 what the business agreement would be.

09:31:22 7 A. He told me that to become partner, because of the  
09:31:26 8 economy situation, is -- cash is tight and he's short on  
09:31:30 9 cash, and he said that he needs to do a lot of work  
09:31:39 10 and -- you know, to find the properties, and he told me  
09:31:44 11 that I need to come up with 60 percent of the investment  
09:31:53 12 and he would take care of the other 40 percent. And so  
09:32:00 13 this was one of the agreements that we made at that  
09:32:04 14 time.

09:32:04 15 Q. Anything else?

09:32:05 16 A. Yes.

09:32:08 17 Q. Explain to us -- tell us whatever terms you and  
09:32:13 18 he agreed on.

09:32:14 19 A. All of them?

09:32:15 20 Q. Yes.

09:32:16 21 A. Well, during many meetings that we discussed,  
09:32:22 22 he -- I agreed with that, and then I told him that I  
09:32:29 23 need to get, you know -- I don't mind investing more,  
09:32:33 24 but I need to get my money back. So we discussed as to  
09:32:39 25 how it should happen. He was telling me I need to

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09:32:48 1 invest more. However, he said that because he's going  
09:32:55 2 to work there, the income that we get from the rent --  
09:33:03 3 net income from the rent, we divide it 50/50. And then  
09:33:09 4 I asked -- I told him that I invest more. However, I  
09:33:16 5 need to get my investment back and become a part on the  
09:33:23 6 investment. He said, "Yeah, we can arrange that." And  
09:33:28 7 then he said that we agree that when -- beyond that rent  
09:33:36 8 money, the net rent money, whatever earning we had, we  
09:33:43 9 distributed according to our share of investment until  
09:33:48 10 our capital account becomes zero.

09:33:55 11 **Q. Did you talk about what kind of entity you would**  
09:34:02 12 **be forming?**

09:34:02 13 A. Yeah. The entity would be a limited liability  
09:34:06 14 corporation, which is good for real estate business.  
09:34:15 15 And then --

09:34:16 16 **Q. You're telling us about what you and Mr. Bidsal**  
09:34:20 17 **agreed to. Right?**

09:34:21 18 A. Yes.

09:34:21 19 **Q. I want you to focus on what agreements you**  
09:34:24 20 **entered into before you started buying properties.**

09:34:27 21 MR. GERRARD: I'm going to have to object to the  
09:34:30 22 question. Obviously the question lacks foundation  
09:34:33 23 because it assumes that there was an agreement at this  
09:34:36 24 point in time, and as all we know, under the Statute of  
09:34:38 25 Frauds, it would have to be in writing to be an

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09:34:41 1 agreement. I object to the question because it assumes  
09:34:44 2 there was some sort of agreement at that point in time.  
09:34:47 3 I don't mind the discussion about what they were  
09:34:50 4 thinking about, but when he's asking what the agreement  
09:34:50 5 was and what the terms of the agreement were, then  
09:34:56 6 that's objectionable under the statute of frauds.  
09:34:56 7 ARBITRATOR WALL: You're talking about an oral  
09:34:58 8 agreement. Right?  
09:34:59 9 MR. LEWIN: That's right.  
09:35:00 10 ARBITRATOR WALL: You're talking about the  
09:35:02 11 discussions they had?  
09:35:04 12 MR. LEWIN: And what terms that they had agreed  
09:35:07 13 to to go forward.  
09:35:11 14 ARBITRATOR WALL: Okay. But, I mean, obviously  
09:35:12 15 if it's before the writing takes place -- and then the  
09:35:16 16 writing subsumes and supercedes any discussions they had  
09:35:20 17 before. If you're limiting this to the discussions they  
09:35:23 18 had --  
09:35:23 19 MR. GERRARD: I have no objection to what they  
09:35:28 20 discussed. It's the "What did you agree to?" That's  
09:35:31 21 what I have an objection to because --  
09:35:31 22 MR. LEWIN: The point of this actual testimony,  
09:35:31 23 Your Honor, what they actually had agreed to in terms of  
09:35:33 24 an oral agreement and how that is consistent with the  
09:35:36 25 terms of the operating agreement.

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09:35:39 1 MR. GERRARD: That's objectionable, Your Honor, Page 1013  
09:35:42 2 because under our Statute of Frauds in NRS 111.205 and  
09:35:48 3 210, you cannot have an oral agreement that lasts for  
09:35:52 4 beyond a year, and certainly not one for the purchase of  
09:35:56 5 real estate. So, you know, this idea that there was  
09:36:00 6 some agreement, it's objectionable because under the law  
09:36:03 7 it cannot exist.  
09:36:07 8 Having a discussion about what we might agree to  
09:36:09 9 in the future in a written agreement, I don't have any  
09:36:12 10 objection to that. But saying that you agree to it and  
09:36:15 11 that these were the terms, I'd absolutely have an  
09:36:17 12 objection to that because it's a violation of the  
09:36:21 13 Statute of Frauds.  
09:36:22 14 MR. LEWIN: It's an oral partnership to go  
09:36:26 15 forward, and the purpose of that is only to show that  
09:36:28 16 when it was reduced in writing -- to interpret the  
09:36:33 17 writing, what their understanding on the going-forward  
09:36:35 18 basis was, and that understanding and agreement between  
09:36:39 19 the parties tends to show the interpretation of the  
09:36:42 20 written agreement.  
09:36:43 21 ARBITRATOR WALL: But there's a difference to me  
09:36:46 22 between couching it as an oral agreement that can be  
09:36:51 23 enforced as opposed to "Here's what we discussed as  
09:36:53 24 evidence of the intention of the parties at the time  
09:36:56 25 that the operating agreement was drafted."

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09:36:59 1 MR. LEWIN: That's the purpose of my questions. Page 1014

09:37:03 2 ARBITRATOR WALL: On the first one I would

09:37:05 3 sustain the objection. When we say "What was the

09:37:08 4 agreement," it's kind of a generic term in terms of what

09:37:11 5 we discussed. That's the way I'm interpreting it.

09:37:14 6 MR. GERRARD: Can we have him phrase the question

09:37:17 7 "What did you discuss" instead of "What was the

09:37:21 8 agreement," because that would violate 111.220?

09:37:26 9 ARBITRATOR WALL: And I would sustain that.

09:37:26 10 BY MR. LEWIN:

09:37:28 11 **Q. Mr. Golshani, did you and Mr. Bidsal discuss how**

09:37:31 12 **the LLC would be managed?**

09:37:33 13 A. Yes.

09:37:33 14 **Q. What was said about that between you and**

09:37:36 15 **Mr. Bidsal?**

09:37:37 16 A. What do you mean -- how the LLC was formed?

09:37:40 17 **Q. In terms of did you and he discuss who would be**

09:37:44 18 **the manager of the LLC?**

09:37:45 19 A. Yeah. We had discussed all of that. We agreed

09:37:51 20 that both of us would be the manager and managing the

09:37:55 21 company. Co-managers. And at that time we -- he told

09:38:04 22 me that he has companies, management companies, that

09:38:09 23 manage real estate, and he will take care of the

09:38:14 24 day-to-day management of the property. All right? We

09:38:22 25 made other -- we had other discussions.

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09:38:27 1 Q. What other discussions did you have about how you  
09:38:30 2 would proceed to work together?

09:38:32 3 A. Well, one of the conditions that I had -- as I  
09:38:38 4 said, we had extremely good relationship at that time.  
09:38:41 5 I told him that, you know, we are becoming partners as  
09:38:47 6 friends and relative, and we are going to be working and  
09:38:51 7 everything should be doing good. The same way we became  
09:38:57 8 partner, if one of the partners doesn't want to continue  
09:38:59 9 with the partnership, for no reason even, he should be  
09:39:04 10 able to do that.

09:39:05 11 And he told me that he has experience in this  
09:39:09 12 matter and he would form the company and have -- he  
09:39:19 13 knows attorneys and they will write buy/sell agreement,  
09:39:23 14 but as a partner -- any partner could offer value for  
09:39:32 15 the company and the other partner would be able to  
09:39:40 16 either buy/sell at the same property or -- same at the  
09:39:46 17 sale price or buy at the same valuation within certain  
09:39:53 18 limit of time, of course, and all that. That was my  
09:39:57 19 other condition.

09:39:58 20 Q. So you indicated that there was a discussion  
09:40:04 21 about Mr. Bidsal would receive 50 percent of the rent  
09:40:14 22 income?

09:40:14 23 A. Yes.

09:40:15 24 Q. Was there a discussion about how that was going  
09:40:18 25 to be calculated?

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09:40:19 1 A. Well, yes. We discussed that.

09:40:22 2 **Q. And tell me what you and he discussed about that.**

09:40:25 3 A. We discussed that the best way to avoid any

09:40:30 4 dispute or any issues is we take the number from the tax

09:40:36 5 return, the net income from the tax return, and that

09:40:41 6 would be what we divide 50/50.

09:40:45 7 **Q. Net income from where?**

09:40:47 8 A. From rent.

09:40:48 9 **Q. How would any other distributions be distributed?**

09:40:51 10 A. And the other -- the other monies in the company

09:40:56 11 would be distributed pro rata the investment share.

09:41:01 12 **Q. Until when?**

09:41:02 13 A. Until all the capital are paid and we are equal

09:41:10 14 zero, and after that, everything else would be 50/50

09:41:15 15 also.

09:41:16 16 **Q. You heard the claim that Mr. Bidsal had paid --**

09:41:24 17 **that ultimately in the operating agreement the deal was**

09:41:26 18 **that all distributions were to be 50/50 until**

09:41:30 19 **substantially all the assets were sold. Was that ever**

09:41:39 20 **mentioned to you?**

09:41:40 21 A. No.

09:41:40 22 **Q. Did the 60/40 ever change to 70/30?**

09:41:45 23 A. Yes.

09:41:46 24 **Q. And when did that take place?**

09:41:47 25 A. We started working together, and -- and we

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09:41:57 1 started from looking at the property in California and  
09:42:03 2 different cities. We went together and they were not  
09:42:12 3 performing, so we would get the package, and it was  
09:42:20 4 thousands of pages we divided them among ourselves and  
09:42:26 5 shared the information.

09:42:27 6 **Q. I'm going to come to this, but right now I just**  
09:42:28 7 **want to know when did the deal change from 60/40 to**  
09:42:34 8 **70/30? Approximately.**

09:42:34 9 A. When we were a few months working together, one  
09:42:39 10 day he told me, "Ben, I have put a lot of work in this,  
09:42:44 11 and both now and after, if you buy something, if you buy  
09:42:52 12 and turn a piece of property or turn a loan to a  
09:42:56 13 property, there is a lot of work involved, and I have  
09:43:00 14 companies and are expenses and all that. I thought that  
09:43:06 15 60/40 is not going to cover it. I need it to be changed  
09:43:11 16 70/30."

09:43:12 17 **Q. Approximately in time when was this?**

09:43:15 18 A. It was probably late 2010/beginning of 2011.

09:43:25 19 **Q. For how many months had you and he been working**  
09:43:29 20 **together looking at properties and whatnot?**

09:43:31 21 A. We worked from -- I mean, up to what point?

09:43:37 22 **Q. At the point in time where he said, "I need 70/30**  
09:43:42 23 **instead of 60/40," how much time had you spent**  
09:43:46 24 **investigating properties?**

09:43:47 25 A. A few months we were looking for properties and



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09:43:52 1 had bid on properties, but we were not successful. Page 1018

09:43:56 2 Q. All right. Okay. So going back after when you

09:44:04 3 and Mr. Bidsal were talking about working together and

09:44:07 4 what the terms of that relationship would be, after

09:44:12 5 you -- after you agreed to the general structure of how

09:44:16 6 you were going to proceed, what did you --

09:44:19 7 MR. GERRARD: Objection to the question again.

09:44:21 8 There was no agreement as to how he was going to proceed

09:44:25 9 in terms of Nevada law NRS 111.220.

09:44:31 10 ARBITRATOR WALL: With that understanding that

09:44:32 11 you're talking about the discussions they had as opposed

09:44:35 12 to an enforceable agreement.

09:44:38 13 MR. LEWIN: We're not going to claim that there

09:44:40 14 was an enforceable agreement until he puts up cash. At

09:44:45 15 this point is how they agreed to go forward.

09:44:47 16 MR. GERRARD: Again, that's the problem. They

09:44:49 17 had not agreed to go forward in a legal fashion until an

09:44:52 18 agreement actually existed, and under Nevada law you

09:44:57 19 can't have an agreement before it's in writing.

09:45:01 20 ARBITRATOR WALL: That's true.

09:45:04 21 So rephrase, please.

09:45:04 22 BY MR. LEWIN:

09:45:05 23 Q. In essence, through these discussions, you and

09:45:10 24 Mr. Bidsal had agreed that as a mechanism for going

09:45:13 25 forward to try to locate properties to be possibly

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09:45:16 1 purchased. Is that correct?

09:45:17 2 A. Yes.

09:45:18 3 Q. Going forward, is it true that's the

09:45:19 4 understanding you would have -- what you ultimately

09:45:24 5 would hope to put into a formal agreement?

09:45:27 6 A. We made that agreement. That's why we both

09:45:30 7 started spending a lot of time on that.

09:45:32 8 Q. So this is still in 2010. What did --

09:45:38 9 MR. GERRARD: Objection. Leading.

09:45:40 10 MR. LEWIN: He just said it was 2010.

09:45:42 11 ARBITRATOR WALL: All right.

09:45:42 12 BY MR. LEWIN:

09:45:43 13 Q. I'm going to term it the "going forward

09:45:45 14 agreement."

09:45:46 15 MR. GERRARD: Again, Your Honor, I object to the

09:45:51 16 use of the word "agreement."

09:45:52 17 ARBITRATOR WALL: You can't -- here's the thing:

09:45:55 18 If you're eliciting the testimony because you want that

09:46:00 19 agreement orally between them enforced --

09:46:03 20 MR. LEWIN: No, I don't.

09:46:04 21 ARBITRATOR WALL: -- the law of course doesn't

09:46:05 22 allow that. So you keep couching the questions in that

09:46:11 23 vein, "based on your agreement." All of that. An

09:46:15 24 agreement is a little bit of a term of art. I've

09:46:19 25 already told you I'm taking this as they're discussions,

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09:46:22 1 but ultimately the operating agreement -- and he's  
09:46:25 2 talking about discussions he had in 2011 -- beginning of  
09:46:32 3 2011, which is after the operating agreement is  
09:46:35 4 executed, so that's a little different. So --

09:46:39 5 MR. LEWIN: Your Honor, I'm only offering -- they  
09:46:42 6 had an understanding about how they were going to  
09:46:45 7 proceed and to locate properties.

09:46:49 8 ARBITRATOR WALL: I like "understanding" better  
09:46:52 9 than "agreement."

09:46:52 10 BY MR. LEWIN:

09:46:53 11 Q. After you and Mr. Bidsal had the going-forward  
09:46:57 12 understanding, what did you and he do in terms of trying  
09:47:00 13 to locate the distressed properties or nonperforming  
09:47:04 14 loans?

09:47:04 15 A. He was looking and I started looking. We were  
09:47:16 16 both subscribed with the magazine that Auction.com would  
09:47:25 17 send every once or twice a month, and we would look at  
09:47:30 18 their property and share the information. That was one  
09:47:34 19 way to do it. And then he knew brokers and then I took  
09:47:41 20 him to some properties that my brokers showed. We  
09:47:46 21 were -- these are the things that we were doing to look  
09:47:49 22 at properties.

09:47:50 23 Q. Did you look at properties together?

09:47:52 24 A. Yes.

09:47:55 25 Q. Where did you look at properties? In what

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09:47:59

**1 states?**

09:47:59

2 A. Well, like I said, we started from California.

09:48:02

3 We would go to city of Glendale I remember. Looked at a

09:48:09

4 few properties over there. We went to Bakersfield and,

09:48:13

5 you know, north of Los Angeles. There were many of them

09:48:19

6 available even to look at those. And also we came to

09:48:27

7 Las Vegas to look at properties.

09:48:29

**8 Q. Where did Mr. Bidsal live at this time?**

09:48:34

9 A. I believe that he was living in Los Angeles, but

09:48:40

10 he spent a lot of time in Las Vegas.

09:48:42

**11 Q. And so did you look at properties in Las Vegas?**

09:48:46

12 A. Yes.

09:48:47

**13 Q. Did you travel to Las Vegas to look at property?**

09:48:53

14 A. Yes. We traveled together.

09:48:55

**15 Q. You traveled from Los Angeles with Mr. Bidsal to**

09:49:00

**16 look at properties?**

09:49:02

17 A. Yes.

09:49:02

**18 Q. How many trips?**

09:49:03

19 A. Many trips. Probably four or five, and each trip

09:49:08

20 would be two, three days. You want me to tell them

09:49:12

21 about --

09:49:12

**22 Q. No. We don't need to go any specifics.**

09:49:16

**23 When you were in Las Vegas, what did you do**

09:49:22

**24 together?**

09:49:23

25 A. What we were doing?

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09:49:24

1 Q. Yeah. Generally.

09:49:26

2 A. Well, I would pick him up in my car and we came

09:49:30

3 here, and then we had those brochures that we had

09:49:36

4 together looked at in some coffee shops and made notes

09:49:41

5 and appraised them as to which one we want to look at,

09:49:50

6 and then I was driving and we would go look at the

09:49:55

7 properties one by one, and he was making notes.

09:50:02

8 Q. And so over what period of time were you doing

09:50:06

9 this, looking at properties? Let me break that up.

09:50:13

10 At one point in time you bid at the auction to

09:50:16

11 acquire the Green Valley/Henderson note?

09:50:20

12 MR. GERRARD: Objection. Leading.

09:50:24

13 ARBITRATOR WALL: Overruled.

09:50:24

14 BY MR. LEWIN:

09:50:26

15 Q. My question is: Before that, how many properties

09:50:29

16 did you look at with Mr. Bidsal?

09:50:32

17 A. In Las Vegas?

09:50:33

18 Q. Las Vegas or anywhere else.

09:50:35

19 A. So many. In Las Vegas alone I think it was over

09:50:43

20 70, 80 that we covered. Even more.

09:50:48

21 Q. And now, Mr. Bidsal testified that you only

09:50:57

22 looked at a few properties together. Is that true?

09:51:01

23 A. No.

09:51:07

24 Q. You looked at 70, 80 properties alone in Las

09:51:11

25 Vegas?

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09:51:11 1 MR. GERRARD: Objection.

09:51:12 2 ARBITRATOR WALL: Sustained. He already kind of

09:51:15 3 said that.

09:51:15 4 BY MR. LEWIN:

09:51:16 5 Q. All right. You said you received materials about

09:51:19 6 these properties. The properties that you were

09:51:21 7 interested in possibly trying to invest in, what kind of

09:51:28 8 due diligence did you do or did you understand

09:51:33 9 Mr. Bidsal was doing on those properties?

09:51:35 10 A. Well, like I said, because it was nonperforming

09:51:38 11 loans, it came with a big package. Thousands of pages

09:51:43 12 of documents. And then so we couldn't -- whatever

09:51:48 13 property we saw, we couldn't go and look at those.

09:51:53 14 First we looked at the property to see which one we are

09:51:57 15 interested, and then we went and we visit the property.

09:52:01 16 And after that we started looking at the loan documents,

09:52:08 17 environmental reports, appraisals that came with it,

09:52:13 18 rent rolls. So many documents. It was so much.

09:52:18 19 We divided -- I was good at the environmental

09:52:22 20 because I had done environmental work and I would get

09:52:25 21 those. I would get the one that had to do with the

09:52:29 22 legal description survey, which was my line of work, and

09:52:35 23 later on I would get appraisals and then I would -- in

09:52:40 24 some of them, I would read the loan docs and report to

09:52:45 25 him and he would tell me what he saw in the loan docs.

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09:52:50 1 We shared the information. And we did that for many  
09:52:54 2 properties.

09:52:54 3 Q. At some point in time were you introduced to  
09:52:58 4 someone named Jeff Chain, C-H-A-I-N?

09:53:02 5 A. Yes, I was.

09:53:02 6 Q. And who introduced you to Mr. Chain?

09:53:05 7 A. Mr. Bidsal introduced me.

09:53:07 8 Q. And what did you understand Mr. Chain did for a  
09:53:10 9 living?

09:53:11 10 A. Mr. Chain was a broker at that time and they had  
09:53:19 11 a relationship. He was very familiar with the Las Vegas  
09:53:24 12 area and he was familiar with the process of purchasing  
09:53:37 13 notes and converting them to the real property.

09:53:43 14 Q. Okay. And did he have a role with respect to the  
09:53:56 15 potential acquisition of distressed properties or  
09:54:00 16 nonperforming notes with you and Mr. Bidsal?

09:54:03 17 A. Yes, he did. What -- we would go to him and  
09:54:07 18 share with him what we had found or what we were  
09:54:10 19 interested. He would look at them. Many of them he  
09:54:13 20 knew and he would give us recommendation as to what is a  
09:54:20 21 good deal to go into and what is not.

09:54:23 22 Q. Okay. Ultimately he was -- strike that.

09:54:29 23 Skipping ahead now, was he involved in the  
09:54:33 24 acquisition of the Green Valley note and deed of trust?

09:54:42 25 A. Yes, he was, and he acted as our broker, and then

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09:54:53 1 after, he was involved.

09:54:55 2 Q. What was the name of his company?

09:55:04 3 A. I believe Millennium.

09:55:08 4 Q. Can you take out Exhibit No. 3, please? Just in

09:55:15 5 the binder. It's the settlement agreement for the note

09:55:27 6 purchase.

09:55:31 7 MR. GARFINKEL: Exhibit 3 is going to be over

09:55:34 8 here.

09:55:35 9 MR. LEWIN: It should be there.

09:55:37 10 MR. GARFINKEL: No, it's not. Here it is.

09:55:40 11 THE WITNESS: Thank you.

09:55:40 12 BY MR. LEWIN:

09:55:55 13 Q. It says in terms of -- there's a commission paid

09:56:01 14 to Millennium Commercial. Is that Mr. Chain's company?

09:56:07 15 A. Yes.

09:56:08 16 Q. Do you see it says finder's fee of \$19,250?

09:56:21 17 A. That's right.

09:56:23 18 Q. Okay.

09:56:23 19 A. Let me see.

09:56:28 20 Q. Just at the same auction that you acquired the

09:56:35 21 Green Valley note and deed of trust and distressed loan

09:56:43 22 package, were you also successful in bidding on another

09:56:51 23 distressed property?

09:56:52 24 A. Yes. On that same day we bought another note.

09:56:57 25 Q. Was that the Country Club?



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09:56:59 1 A. Yeah.

09:57:00 2 Q. Was there a broker on that deal?

09:57:02 3 A. Jeff Chain.

09:57:04 4 Q. Okay. Going back in time, you said that you and

09:57:10 5 Mr. Bidsal were investigating properties. Did you end

09:57:13 6 up -- talking about before the Green Valley note. Did

09:57:20 7 you and Mr. Bidsal bid on any other properties or notes?

09:57:25 8 A. Yes, we did.

09:57:27 9 Q. Would you tell us, are you talking through

09:57:32 10 Auction.com?

09:57:33 11 A. Through Auction.com, yes.

09:57:33 12 Q. And how many other properties did you and

09:57:36 13 Mr. Bidsal bid on? I'm talking, again, before the Green

09:57:41 14 Valley.

09:57:41 15 A. I understand. I don't know the number, but we

09:57:46 16 did bid on some properties, but --

09:57:52 17 Q. In order to bid at an auction, what do you have

09:57:56 18 to do in order to submit a bid?

09:57:58 19 A. In order to bid in an auction, you first need to

09:58:08 20 guarantee, like, earnest money, couple of percent, and

09:58:17 21 send to auction. However, they would also accept credit

09:58:22 22 card. Then you need to -- you need to -- you need to

09:58:33 23 send them proof of fund to prove that you would -- you

09:58:36 24 are able to come up with the money if you got awarded.

09:58:44 25 Auction.com --

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09:58:52  
09:58:56  
09:58:59  
09:58:59  
09:59:06  
09:59:08  
09:59:18  
09:59:22  
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09:59:47  
09:59:49  
09:59:53  
09:59:59  
10:00:00  
10:00:05  
10:00:11  
10:00:16  
10:00:19  
10:00:24  
10:00:26  
10:00:34  
10:00:38  
10:00:43

1 Q. So you had to first of all put up a credit card  
2 or something in order to be able to bid. Right?

3 A. Yes.

4 Q. And when you and Mr. Bidsal started bidding on  
5 properties, whose credit card was put up?

6 A. Well, like I said, he had informed me that he was  
7 not in a good shape financially, and I volunteered to  
8 give my credit cards. It was a few hundred thousand  
9 dollars altogether, and he would use those credit cards  
10 to be able to get into the bid.

11 Q. Had you or Mr. Bidsal discussed through what  
12 entity you would be doing the bidding?

13 A. What happened, yes.

14 Q. What entity did you discuss doing the bidding on  
15 the joint behalf?

16 A. The name of the entity, he said that he could bid  
17 under West Coast Investment, and there is another  
18 company. I believe Real Equity. That company would act  
19 as our agent to take care of the property, but we have  
20 to take care of the financial and we have to take care  
21 of the proof of funds.

22 Q. Do you recall when you first gave Mr. Bidsal the  
23 credit card or use of the credit card?

24 A. I -- well, it was sometime in 2010 later on, but  
25 I don't remember exactly.

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10:00:44 1 Q. When the credit card is delivered to Auction.com,  
10:00:48 2 do they actually charge the credit card or --  
10:00:50 3 A. No. They block -- let's say if it took \$50,000  
10:00:56 4 to bid, they block that amount from your credit. You  
10:01:00 5 couldn't use it.  
10:01:01 6 Q. When would they charge the card, if ever?  
10:01:03 7 A. They never -- if you were not the winner of  
10:01:10 8 the -- of the bidding, they would just release it. If  
10:01:16 9 you were the winner, you had to immediately pay  
10:01:20 10 10 percent -- wire them 10 percent money and they would  
10:01:25 11 release that block.  
10:01:27 12 Q. So was your credit card ever actually charged?  
10:01:35 13 A. I don't remember it was charged, but it was  
10:01:39 14 blocked. Sometimes I had difficulty.  
10:01:44 15 Q. Was that credit card used in connection with the  
10:01:47 16 Green Valley auction?  
10:01:48 17 A. Yes.  
10:01:49 18 Q. And I just want to make sure you know what I mean  
10:01:50 19 when I say Green Valley auction --  
10:01:52 20 A. Yes.  
10:01:53 21 Q. -- and also the Country Club auction?  
10:01:55 22 A. Yes.  
10:01:57 23 MR. GERRARD: Objection. Lack of foundation.  
10:01:59 24 ARBITRATOR WALL: Overruled.  
10:01:59 25 ///

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10:01:59

1 BY MR. LEWIN:

10:02:00

2 Q. At some point in time did you ask Mr. Bidsal to

10:02:04

3 release the card?

10:02:09

4 A. Yes. What happened, I was going to Europe, and I

10:02:14

5 wanted to, you know, buy ticket, and, you know, I had

10:02:20

6 some expenses that I was paying with the credit card,

10:02:24

7 and I realized that there is not much credit left, so I

10:02:28

8 wrote him an Email. I said, "Would you please release,"

10:02:33

9 because I believe that he used that credit card to bid

10:02:38

10 on other deals that he had since my limit was high. And

10:02:49

11 then he released some of it.

10:02:50

12 Q. Did Mr. Bidsal acknowledge he received the Email

10:02:54

13 from you?

10:02:54

14 A. Pardon me?

10:02:55

15 Q. Did Mr. Bidsal tell you he received the Email

10:02:59

16 from you?

10:02:59

17 A. Yes.

10:03:03

18 Q. I'd like to mark as Exhibit 203, we have an Email

10:03:09

19 February 21, 2012, which was marked in the first

10:03:11

20 arbitration as Exhibit 40.

10:03:11

21 MR. SHAPIRO: Is there a Bates stamp?

10:03:13

22 MR. GERRARD: No. We object obviously, but --

10:03:15

23 ARBITRATOR WALL: Hold on.

10:03:16

24 MR. LEWIN: It is one of our exhibits. I think

10:03:19

25 on the exhibit list where the exhibits that were listed

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10:03:23 1 in the first arbitration.

10:03:25 2 ARBITRATOR WALL: Please hold on.

10:03:25 3 MR. SHAPIRO: Well, 203, you didn't get to 203.

10:03:30 4 That's a new one.

10:03:31 5 ARBITRATOR WALL: Let him finish. He's talking

10:03:35 6 about did you have a general --

10:03:37 7 MR. LEWIN: We had identified it as an exhibit, I

10:03:50 8 believe. Let me take a look where it is.

10:03:52 9 MR. GERRARD: What exhibit number was it in the

10:03:55 10 last arbitration?

10:04:01 11 ARBITRATOR WALL: You have -- is it in 196, 197,

10:04:04 12 or 198?

10:04:06 13 MR. LEWIN: This would be in 198. It would be

10:04:10 14 Exhibit 40, so it's in this book.

10:04:30 15 MR. GERRARD: It's not in the book. That's the

10:04:34 16 problem.

10:04:34 17 ARBITRATOR WALL: Hold on. 198.

10:04:58 18 MR. GERRARD: Which exhibit number did you say it

10:04:59 19 was from the past?

10:05:00 20 ARBITRATOR WALL: 40. So it's one of the last

10:05:03 21 four or five pages. Six or eight pages in from the back

10:05:06 22 of 198.

10:05:29 23 Any objection to 40?

10:05:31 24 MR. GERRARD: No, but I object to 2-0 whatever it

10:05:36 25 is.

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10:05:36 1 MR. LEWIN: I'm not offering the entire 198. Page 1031

10:05:40 2 ARBITRATOR WALL: I understand. We will admit

10:05:42 3 what's marked as Exhibit 40 within Tab 198. For us it's

10:05:50 4 a portion of 198. Got it?

10:05:55 5 (Exhibit 40 was admitted into evidence.)

10:05:55 6 MR. LEWIN: I'm going to show him the one page.

10:05:55 7 BY MR. LEWIN:

10:06:04 8 Q. This is an February 21, 2012 Email. Is this the

10:06:11 9 Email you talked about?

10:06:12 10 A. Yes.

10:06:13 11 Q. And you had provided Mr. Bidsal with your credit

10:06:22 12 cards from 2010 until this 2012 Email?

10:06:28 13 A. Yes.

10:06:29 14 Q. And he did cause some of the funds to be

10:06:38 15 released. Is that correct?

10:06:39 16 A. Yeah.

10:06:44 17 Q. At some point in time did you become aware of the

10:06:52 18 Green Valley/Henderson property?

10:07:03 19 A. Pardon me?

10:07:04 20 Q. At some point in time did you become aware of the

10:07:07 21 Green Valley/Henderson property?

10:07:10 22 A. That's correct.

10:07:11 23 Q. And when was that?

10:07:13 24 A. As I said, in one of those brochures we located

10:07:21 25 and we came to visit probably -- I mean, early 2011

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10:07:27 1 probably February or March. I don't remember. Page 1032

10:07:30 2 Q. Were you getting the packages directly?

10:07:34 3 A. Yes.

10:07:35 4 Q. Was it your understanding he was getting the same

10:07:38 5 package?

10:07:38 6 A. Yes.

10:07:39 7 Q. What was the opportunity that was presented by

10:07:41 8 the Green Valley/Henderson package?

10:07:44 9 A. What was the opportunity?

10:07:45 10 Q. Yes.

10:07:46 11 A. Well, we knew that it was a loan. And when we

10:07:58 12 visited the property, we saw it was a business park, and

10:08:02 13 there was a possibility to subdivide it into eight

10:08:08 14 buildings and as a condominium to sell some of it. We

10:08:20 15 saw that there was an opportunity to convert the loan to

10:08:25 16 the real estate.

10:08:29 17 Q. Just to put a time frame around it, when was the

10:08:32 18 bidding at Auction.com where the Green Valley/Henderson

10:08:42 19 note package was purchased?

10:08:44 20 A. The auction itself?

10:08:46 21 Q. The actual auction itself?

10:08:48 22 A. May. I know we -- yeah. May. Sometime in May.

10:08:54 23 Mid-May.

10:08:56 24 Q. So do you remember -- did you wire -- put the

10:09:02 25 time frame again. You wired some money on May 20th.

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10:09:07 1 Does that help you?

10:09:08 2 MR. GERRARD: Objection. Leading.

10:09:10 3 A. Yeah.

10:09:11 4 ARBITRATOR WALL: I mean, it's in the documents

10:09:13 5 we already have.

10:09:15 6 MR. GERRARD: I appreciate it, but I'd like to

10:09:17 7 know what the witness remembers, not what Mr. Lewin

10:09:17 8 remembers.

10:09:17 9 ARBITRATOR WALL: Understood, but this is our

10:09:24 10 only day of testimony.

10:09:24 11 MR. GERRARD: I haven't objected too many times.

10:09:26 12 ARBITRATOR WALL: Understood. Overrule it for

10:09:26 13 that question. Let's go.

10:09:26 14 BY MR. LEWIN:

10:09:31 15 Q. Did you go and see the Henderson property

10:09:34 16 together?

10:09:36 17 A. Yes.

10:09:37 18 Q. Did you have any conversations with Jeff Chain?

10:09:39 19 A. Later on, yes.

10:09:40 20 Q. What did Mr. Chain say?

10:09:43 21 MR. GERRARD: Objection.

10:09:45 22 ARBITRATOR WALL: Sustained. I need something

10:09:47 23 more particularized than that.

10:09:47 24 BY MR. LEWIN:

10:09:49 25 Q. Did Mr. Chain offer you any advice about



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10:09:53 1 property?

10:09:54 2 MR. GERRARD: Calls for hearsay.

10:09:56 3 ARBITRATOR WALL: That's a yes or no question.

10:09:57 4 A. Yes.

10:09:57 5 BY MR. LEWIN:

10:09:58 6 Q. Did that advice help you make a decision in terms

10:10:01 7 of whether or not to bid on the property?

10:10:03 8 A. Yes.

10:10:03 9 Q. And what was that advice?

10:10:05 10 A. He said --

10:10:07 11 MR. GERRARD: Objection. Calls for hearsay.

10:10:10 12 MR. LEWIN: It's an exception. It's a state of

10:10:12 13 mind to the extent he's relying on Mr. Chain's statement

10:10:16 14 for the truth, because it shows what the course of

10:10:20 15 action he and Mr. Bidsal took.

10:10:22 16 MR. GERRARD: If he's saying that he relied upon

10:10:25 17 the information, then he was relying upon the truth of

10:10:28 18 the matter asserted. It's not a state of mind hearsay

10:10:35 19 assertion.

10:10:36 20 ARBITRATOR WALL: Why is his state of mind

10:10:39 21 regarding that particular property and whatever

10:10:42 22 information he learned from Mr. Chain relevant?

10:10:45 23 MR. LEWIN: Because we heard Mr. Bidsal said he

10:10:48 24 had a business opportunity tied up. He did everything.

10:10:51 25 He found it. He did it. I'm trying to establish that

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10:10:55 1 the fact is that Mr. Bidsal was not telling the truth Page 1035  
10:10:57 2 when he did that. In fact, that there was a whole bunch  
10:11:00 3 of steps and they tied up the opportunity together.  
10:11:03 4 MR. GERRARD: How does that have to do with --  
10:11:06 5 MR. LEWIN: That's what Mr. Bidsal testified to.  
10:11:09 6 This was his opportunity and he let Mr. Golshani in  
10:11:13 7 simply because he's a nice guy. Like he did a lot of  
10:11:16 8 other things as a nice guy.  
10:11:18 9 MR. GERRARD: So, Your Honor, obviously there's  
10:11:21 10 not -- he said a state of mind exception. There's no  
10:11:25 11 such thing as a state of mind exception in the hearsay  
10:11:27 12 rule. There's presence sense impression. There's  
10:11:32 13 excited utterances. But again, the way he asked the  
10:11:34 14 question was: Did you receive advice and did you rely  
10:11:39 15 upon that advice, and then he asked what was the advice.  
10:11:43 16 That's hearsay under NRS Chapter 51 because it's being  
10:11:48 17 offered for the truth of the matter asserted. If they  
10:11:51 18 want to bring Mr. Chain in to testify about what he  
10:11:54 19 said, then that's the witness it should come from. Not  
10:11:57 20 from this witness.  
10:11:59 21 You know, I don't think there's any objection  
10:12:02 22 about did you rely upon the advice you got. As soon as  
10:12:05 23 he starts asking what these out-of-court statements  
10:12:09 24 were, that's hearsay.  
10:12:11 25 ARBITRATOR WALL: Um, is Mr. Chain going to

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10:12:15 1 testify?

10:12:15 2 MR. LEWIN: Yes, he is.

10:12:17 3 ARBITRATOR WALL: So he's --

10:12:18 4 MR. LEWIN: He's scheduled at 11 o'clock.

10:12:21 5 ARBITRATOR WALL: He's going to testify at the

10:12:23 6 hearing and be subject to cross-examination regarding

10:12:26 7 the statement. Right?

10:12:27 8 MR. GERRARD: Right. And that's where the

10:12:29 9 statement should come in. Not from this witness. This

10:12:31 10 witness is hearsay.

10:12:32 11 MR. LEWIN: Let me ask a different question.

10:12:36 12 ARBITRATOR WALL: Okay.

10:12:36 13 BY MR. LEWIN:

10:12:43 14 Q. Did you and Mr. Bidsal have a joint conversation

10:12:47 15 with Mr. Chain about what he thought about the Henderson

10:12:55 16 opportunity?

10:12:55 17 A. Mr. Chain?

10:12:56 18 Q. Yes.

10:12:57 19 A. Yes.

10:12:57 20 Q. Face to face or on the telephone?

10:13:01 21 A. Face to face.

10:13:04 22 Q. Mr. Bidsal -- after you met with Mr. Chain,

10:13:11 23 whatever his advice was, you and Mr. Bidsal decided to

10:13:15 24 bid on the Henderson note. Is that correct?

10:13:18 25 A. After that, yes, we decided to bid.

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10:13:24 1 Q. You heard Mr. Bidsal say that he owned and  
10:13:29 2 controlled the Green Valley/Henderson opportunity before  
10:13:33 3 you even got involved. Is that true?

10:13:35 4 A. No.

10:13:35 5 Q. You've been describing all the things you were  
10:13:38 6 doing in connection with that opportunity. Right?

10:13:40 7 A. That's right.

10:13:41 8 Q. And after you'd met with Mr. Chain, did you do  
10:13:47 9 due diligence regarding the Green Valley opportunity?

10:13:50 10 A. Yes. I -- yes.

10:13:51 11 Q. Is that the same kind of due diligence that you  
10:13:54 12 described earlier?

10:13:55 13 A. Yes.

10:13:56 14 Q. And did you and Mr. Bidsal have a plan if you  
10:14:00 15 were successful in obtaining the Green -- the Henderson  
10:14:06 16 note and loan package, what you would do with that after  
10:14:10 17 you obtained it, you were successful in obtaining it?

10:14:14 18 A. The plan was to first try to negotiate with the  
10:14:22 19 borrower and get the property because the loan amount  
10:14:31 20 was more than the worth of the property worth, and after  
10:14:42 21 that we would subdivide the property and get it ready  
10:14:47 22 for sale.

10:14:51 23 Q. Was there a point in time when you and Mr. Bidsal  
10:14:55 24 actually decided with proceeding with trying to obtain  
10:15:02 25 the Green Valley note?

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10:15:04 1 A. I'm sorry?

10:15:05 2 Q. There was a point in time where you and he

10:15:08 3 decided to try to bid on the property?

10:15:08 4 A. Yes.

10:15:10 5 Q. You talked about that?

10:15:11 6 A. Yes.

10:15:12 7 Q. And if you put in the 10 percent deposit on

10:15:19 8 May 20th, that indicates when was the bidding? When was

10:15:22 9 the actual bidding?

10:15:23 10 A. The bidding was a day earlier. 19th.

10:15:30 11 Q. All right. By the way, was the Green

10:15:36 12 Valley/Henderson note in default at the time that you

10:15:39 13 were bidding on it?

10:15:40 14 A. Yes.

10:15:40 15 Q. Did you know how much was in arrears under the

10:15:43 16 note?

10:15:45 17 A. I -- we had information it was about 8 million

10:15:52 18 dollars.

10:15:52 19 Q. Did you know how much were the past due payments

10:15:57 20 that hadn't been paid?

10:15:58 21 A. I don't remember.

10:16:00 22 Q. Okay. Where did the bidding take place?

10:16:05 23 A. It was in a building in Las Vegas. In those days

10:16:13 24 all the bidders would gather.

10:16:16 25 Q. And who -- did you and Mr. Bidsal also attend the

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10:16:24 1 bidding?

10:16:25 2 A. Yes.

10:16:25 3 Q. Who else was there?

10:16:26 4 A. Jeff Chain.

10:16:28 5 Q. And how did you bid? Was it verbal or written?

10:16:33 6 A. No. It was online. As I --

10:16:41 7 Q. It was online with a computer?

10:16:42 8 A. Yes.

10:16:43 9 Q. Okay. And were you also bidding on another

10:16:48 10 property on that same day, May 19th?

10:16:50 11 A. Yes. On several properties we did.

10:16:54 12 Q. Was one of those the Country Club property?

10:16:57 13 A. Correct.

10:16:58 14 Q. What's the address of that property, the Country

10:17:01 15 Club property?

10:17:02 16 A. It is -- I don't remember. It's in Horizon

10:17:13 17 Ridge.

10:17:13 18 Q. What?

10:17:14 19 A. Horizon Ridge.

10:17:16 20 Q. And was Mr. Bidsal controlling the bidding by

10:17:22 21 himself? I mean, was he making the decision whether to

10:17:26 22 put the bid or increase the bids or not?

10:17:29 23 A. Both of us were involved.

10:17:31 24 Q. In other words, you and he would talk about what

10:17:34 25 to bid?

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10:17:34 1 A. Yes.

10:17:35 2 Q. And what about increases in bids? Was that a

10:17:38 3 matter of joint --

10:17:40 4 A. The increase was coming from the auction. It

10:17:43 5 started from smaller increase, and after certain price

10:17:49 6 it would go -- first, let's say \$25,000 increment.

10:17:55 7 After a few it became \$50,000 increment. Then 100,000.

10:18:01 8 Like that. We didn't have control how much --

10:18:03 9 Q. My question was really between you and

10:18:06 10 Mr. Bidsal, how was the decision made to make an

10:18:10 11 increased bid?

10:18:11 12 A. We were both looking at the monitor, and then

10:18:16 13 when they overbid us, we would say okay. "Let's go" --

10:18:23 14 sometime he would say, sometime I would say "Let's go

10:18:26 15 one more higher and see what happens."

10:18:28 16 Q. This is something that you were jointly agreeing

10:18:31 17 on --

10:18:31 18 A. Yes.

10:18:32 19 Q. -- in order to make an increase?

10:18:34 20 A. Yes.

10:18:35 21 Q. Why was Mr. Chain there?

10:18:37 22 A. Mr. Chain was there to --

10:18:40 23 Q. Was he participating in the recommendation?

10:18:43 24 A. He was a part of the conversation, yes.

10:18:45 25 Q. He was there as your broker?

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10:18:46

1 A. Yes. He was our broker.

10:18:48

2 Q. So when you got the successful bid for the Green

10:18:55

3 Valley notes, was there a deposit that was required to

10:18:59

4 be put up?

10:18:59

5 A. Yes. We had to immediately send them the

10:19:03

6 deposit.

10:19:03

7 Q. And so that deposit would be been due on

10:19:13

8 May 20th. Right?

10:19:14

9 A. Actually, they expected to get it the same day.

10:19:18

10 There was no possibility. Probably the banks were

10:19:21

11 closed. After the cutoff time for wiring is like 1:30.

10:19:26

12 I think it was past that, so...

10:19:30

13 Q. We established that you actually put up the

10:19:37

14 \$404,000?

10:19:38

15 A. Yes, I put up.

10:19:40

16 Q. What happened to Mr. Bidsal's 30 percent share?

10:19:43

17 A. Well, he told me that he was -- his money was

10:19:47

18 tight and he asked me to pay the whole thing and he said

10:19:52

19 he would reimburse me, and, you know, we had such a

10:19:57

20 great relationship and such a huge trust that I didn't

10:20:02

21 hesitate. So I called my bank and arranged to pay the

10:20:09

22 whole thing.

10:20:10

23 Q. Did he tell you that -- strike that.

10:20:13

24 Did you know before you started bidding that you

10:20:16

25 were going to have to put up this 10 percent if you were



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10:20:21 1 the successful bidder?

10:20:22 2 A. You mean all by myself?

10:20:24 3 Q. No, no. Were you aware that if you and

10:20:27 4 Mr. Bidsal were the successful bidders, you'd have to

10:20:30 5 put up a 10 percent deposit?

10:20:32 6 A. Yes.

10:20:32 7 Q. And the bidding was being done through what

10:20:35 8 company?

10:20:36 9 A. LRA.

10:20:39 10 Q. My point, was it Real Equity or --

10:20:45 11 A. Yeah.

10:20:46 12 MR. GERRARD: Objection. Leading.

10:20:47 13 ARBITRATOR WALL: Overruled. We've already had

10:20:51 14 that testimony out there.

10:20:52 15 A. They were our agent to do this.

10:20:52 16 BY MR. LEWIN:

10:20:54 17 Q. Did Mr. Bidsal tell you before you started

10:20:57 18 bidding that he couldn't come up with his 30 percent

10:21:00 19 share of the deposit?

10:21:02 20 A. No.

10:21:03 21 Q. Only after you were successful. Right?

10:21:05 22 A. Yes.

10:21:06 23 Q. Did you also have to put up a deposit for the

10:21:10 24 Country Club property that you were successful at?

10:21:14 25 A. I did the same thing.

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10:21:58  
10:22:00  
10:22:05  
10:22:08  
10:22:10  
10:22:13  
10:22:18  
10:22:18  
10:22:30  
10:22:33  
10:22:37

1           **Q. The deal on Country Club was the same deal as**  
2           **with respect to Green Valley. Correct?**  
3           MR. SHAPIRO: Objection. Relevance.  
4           ARBITRATOR WALL: I don't know what the relevance  
5           at all is.  
6           MR. LEWIN: The relevance is they were bidding on  
7           two properties they ended up buying at the same auction.  
8           They had Mr. LeGrand draft both operating agreements,  
9           which are identical except for the amount of capital.  
10          They have the same provisions with respect to the  
11          waterfall and that there is documents in evidence about  
12          the fact that Mr. Golshani was complaining about both  
13          Country Club and Green Valley in that --  
14          MR. SHAPIRO: Which we objected to.  
15          MR. LEWIN: -- and they tie in together the fact  
16          that he thought that the same waterfall, same meaning to  
17          Exhibit B was the same for both properties.  
18          ARBITRATOR WALL: Yeah. Got that. I've said  
19          before I didn't think the Country Club portion of it in  
20          the operating agreement were relevant. I'm going to  
21          sustain the objection as to Country Club.  
22          BY MR. LEWIN:  
23          **Q. After the bidding was successful, did you and**  
24          **Mr. Bidsal talk about what were the next steps in**  
25          **proceeding?**

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10:22:40 1 A. What proceeding?

10:22:42 2 Q. You were successful in the bid for Green Valley.

10:22:46 3 Did you and he talk about what to do next?

10:22:49 4 A. Yes.

10:22:49 5 Q. What was that discussion?

10:22:50 6 A. We had a plan, as I mentioned before, that first

10:22:57 7 thing was we needed to form an LLC as we had agreed.

10:23:06 8 Then the plan was that we hire an attorney to negotiate

10:23:15 9 with the borrower to do a deed in lieu instead of going

10:23:25 10 through the foreclosure process and subdivision. These

10:23:30 11 were all in order when we started right away.

10:23:34 12 Q. Okay. Would you look at Exhibit 4, please? This

10:23:50 13 is the articles of organization for Green Valley

10:23:55 14 Commerce, LLC, which were filed on May 26, 2011. Did

10:24:00 15 Mr. Bidsal tell you at or about that time that you had

10:24:04 16 formed an LLC?

10:24:05 17 A. Yes.

10:24:06 18 Q. Did he show you this document before you actually

10:24:11 19 put up all of your capital in terms of -- to actually

10:24:18 20 complete the purchase of the note?

10:24:20 21 A. This document?

10:24:23 22 Q. Yeah.

10:24:24 23 A. I don't think so.

10:24:25 24 Q. Did he tell you that he had identified himself as

10:24:28 25 the sole manager?

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10:24:34 1 A. He didn't -- you mean before he showed me this Page 1045  
10:24:38 2 document?  
10:24:38 3 **Q. That's right.**  
10:24:39 4 A. No, he didn't.  
10:24:40 5 **Q. At what point in time did you find out that he**  
10:24:44 6 **had designated himself as the sole manager of Green**  
10:24:49 7 **Valley Commerce, LLC?**  
10:24:50 8 MR. GERRARD: I'm going to object.  
10:24:51 9 ARBITRATOR WALL: Hold on.  
10:24:53 10 MR. GERRARD: He's misstating the evidence,  
10:24:55 11 misstating the document. The document speaks for  
10:24:58 12 itself. The document is clearly marked that management,  
10:25:00 13 Paragraph 4, is members. Doesn't say that he's the sole  
10:25:05 14 manager because it was member-managed, not  
10:25:09 15 manager-managed, and it states right on there that it's  
10:25:13 16 members.  
10:25:14 17 MR. LEWIN: Section 5 identifies those managers  
10:25:17 18 and there's only one named.  
10:25:19 19 MR. GERRARD: Name and address of each manager or  
10:25:22 20 managing member.  
10:25:23 21 MR. LEWIN: Of each.  
10:25:24 22 MR. GERRARD: It's identifying him as a managing  
10:25:26 23 member, but it doesn't say that he's the manager.  
10:25:29 24 MR. LEWIN: No, it says each manager or managing  
10:25:32 25 member.

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10:25:32 1 MR. GERRARD: Correct.

10:25:33 2 MR. LEWIN: It says each. So if there were more

10:25:37 3 than one manager -- and by the way, I call your

10:25:41 4 attention to your trial brief that says that not only

10:25:44 5 was Mr. Bidsal the sole manager, he was the sole owner.

10:25:48 6 So I'll point that out later in closing arguments.

10:25:51 7 ARBITRATOR WALL: I'll allow the question.

10:25:53 8 Overrule the objection.

10:25:53 9 BY MR. LEWIN:

10:25:54 10 Q. I forgot the question now.

10:25:56 11 The question was: Did Mr. Bidsal ever tell

10:26:00 12 you -- strike that.

10:26:01 13 Before you put up all of your money to buy the

10:26:05 14 note, did Mr. Bidsal tell you he identified himself as

10:26:08 15 the sole managing member of Green Valley?

10:26:11 16 A. No.

10:26:11 17 Q. At what point in time did you find out that

10:26:25 18 Mr. Bidsal was identified as the sole manager?

10:26:28 19 A. Well, I --

10:26:30 20 MR. GERRARD: Again, you know, I'm sorry. I have

10:26:32 21 to object. It does not say that he's the sole manager.

10:26:35 22 It's not what the document says.

10:26:39 23 ARBITRATOR WALL: So the question was at some

10:26:42 24 point did you find out that Mr. Bidsal was the sole

10:26:46 25 manager?

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10:26:47 1 MR. LEWIN: That's correct.

10:26:49 2 ARBITRATOR WALL: Okay. Is that strictly from

10:26:51 3 these articles of organization that you're going from?

10:26:55 4 MR. LEWIN: I'll ask him. May I ask the

10:26:58 5 question?

10:26:59 6 ARBITRATOR WALL: Yeah. You can ask him.

10:26:59 7 BY MR. LEWIN:

10:27:01 8 Q. At some point in time did you find out who had

10:27:04 9 been identified as the manager of Green Valley?

10:27:06 10 A. Yes.

10:27:07 11 Q. How did you find that out?

10:27:08 12 A. I got this document and I realized -- shall I

10:27:16 13 continue? I realized that my name is nowhere there,

10:27:20 14 neither as a member or a manager, and I went to him and

10:27:24 15 I said "How come" --

10:27:25 16 Q. We're not there yet.

10:27:28 17 How did you obtain the document?

10:27:29 18 A. He gave it to me. He send it to me.

10:27:32 19 Q. When he gave it to you, did you have a

10:27:35 20 conversation about how come it only has his name on it?

10:27:39 21 A. That's what I said, yes.

10:27:40 22 Q. What did Mr. Bidsal say?

10:27:43 23 A. Mr. Bidsal says that this is just a formality and

10:27:48 24 my name would be there when the attorney prepares the

10:27:51 25 operating agreement. They would put it there in the

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10:27:57 1 first sentence with everything.

10:27:59 2 Q. Okay.

10:28:00 3 A. And I took his word for it.

10:28:03 4 Q. Okay. Between you and Mr. Bidsal, who was going  
10:28:10 5 to do the negotiations with the borrower?

10:28:15 6 A. He was going to do it with the attorney that he  
10:28:20 7 said he had.

10:28:21 8 Q. Can you tell us how much time after the  
10:28:28 9 transaction was closed -- and that's, I think, June 3  
10:28:31 10 when the escrow closed. How soon after that was a  
10:28:38 11 surveyor hired?

10:28:41 12 A. Very soon.

10:28:43 13 Q. Were you involved in the selection of the  
10:28:46 14 surveyor?

10:28:47 15 A. Yes. And I knew VTN from my previous experience  
10:28:53 16 with government.

10:28:56 17 Q. So at some point in time were you advised that  
10:29:01 18 Mr. Bidsal had hired a lawyer?

10:29:02 19 A. Yes.

10:29:03 20 Q. And who did Mr. Bidsal tell you he had hired?

10:29:08 21 A. I didn't know. Later on I learned that it was  
10:29:13 22 Mr. David LeGrand.

10:29:17 23 Q. And how soon after the bidding was successful for  
10:29:25 24 Green Valley did Mr. Bidsal tell you he had hired  
10:29:28 25 Mr. LeGrand?

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10:29:30 1 A. I'm sorry. I don't remember.

10:29:32 2 Q. But at some point in time were you introduced to

10:29:36 3 Mr. LeGrand?

10:29:38 4 A. Yes.

10:29:38 5 Q. And did you meet with him?

10:29:39 6 A. Yes.

10:29:40 7 Q. And when was that?

10:29:41 8 A. Probably in June. Meet June of 2011.

10:29:57 9 Q. Had you received any documents from Mr. LeGrand

10:30:08 10 before you met with him?

10:30:13 11 A. Not from him, but I received from Mr. Bidsal.

10:30:18 12 Q. I see. And did -- was the op -- how many drafts

10:30:37 13 of the operating agreement did you receive?

10:30:41 14 A. We received the --

10:30:46 15 MR. GERRARD: I'm going to object it's vague

10:30:48 16 based on time.

10:30:48 17 BY MR. LEWIN:

10:30:49 18 Q. Before you met Mr. LeGrand, how many draft

10:30:54 19 documents had you received?

10:30:56 20 A. Couple of them.

10:30:57 21 Q. Were they satisfactory?

10:30:59 22 A. Pardon me?

10:31:00 23 Q. Did they conform to the understanding you had

10:31:03 24 with Mr. Bidsal?

10:31:05 25 A. No, they didn't. It was not reflecting what we



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10:31:09 1 had agreed to.

10:31:11 2 Q. So during the first meeting you had with

10:31:15 3 Mr. LeGrand, was Mr. Bidsal present?

10:31:20 4 A. Yes. He took me there.

10:31:22 5 Q. And did you, Mr. Bidsal, discuss with Mr. LeGrand

10:31:27 6 about what the terms of -- what the understanding you

10:31:30 7 had in terms of the going-forward relationship?

10:31:35 8 A. Yes. In detail.

10:31:36 9 Q. Was it any different than what you had described

10:31:39 10 earlier as what your understanding was with Mr. Bidsal?

10:31:43 11 A. No. The same thing. We both told him the same

10:31:47 12 thing.

10:31:48 13 Q. Did you tell him about the percentage?

10:31:51 14 A. Yes.

10:31:51 15 Q. What did you tell him about the percentage?

10:31:54 16 A. Well, I told him exactly what happened. I said

10:31:59 17 that the percentage of investment should be 70/30. I

10:32:09 18 put the 70 percent over. I needed to get that money

10:32:15 19 back when -- you know, through the money other than net

10:32:22 20 rent, and the proceeds from the net rent we will divide

10:32:30 21 50/50.

10:32:32 22 There was another discussion that we had agreed

10:32:35 23 that both of us manage the property, be co-managers.

10:32:41 24 And he only showed one manager, and I discussed with

10:32:50 25 Mr. Bidsal. He said according to Nevada law, only one

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10:32:54 1 manager is allowed. So I discussed it with Mr. LeGrand  
10:33:02 2 and I asked if that's the case. He said no. You can  
10:33:07 3 have as many managers. So I agreed that both of us be  
10:33:13 4 manager of that entity.

10:33:18 5 And then we discussed about the buy/sell  
10:33:28 6 agreement, and I told him factually what we have  
10:33:31 7 discussed. That I have seen people go into agreement,  
10:33:34 8 and because they didn't have a buy/sell agreement, they  
10:33:37 9 had to go to court for years and we both want to avoid  
10:33:42 10 that. We want a buy/sell agreement that anybody can buy  
10:33:48 11 and the other party has to either sell or buy at the  
10:33:52 12 same property. And he made notes. And these were the  
10:33:59 13 discussions we had with him.

10:34:00 14 **Q. Did you discuss with Mr. LeGrand the return of**  
10:34:04 15 **capital?**

10:34:05 16 A. Yes.

10:34:08 17 **Q. Go ahead. What was said to LeGrand about that?**

10:34:14 18 A. We said that we first -- we first distribute the  
10:34:24 19 rent money, the net rent money. Whatever is left we  
10:34:30 20 distributed according to the pro rata share of the  
10:34:35 21 capital of the partners.

10:34:38 22 **Q. Okay. So at the time you met with Mr. LeGrand,**  
10:34:54 23 **did you understand he was also working on the deed in**  
10:35:00 24 **lieu agreement?**

10:35:01 25 A. I knew that, yes.

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10:35:03  
10:35:06  
10:35:09  
10:35:14  
10:35:14  
10:35:21  
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10:36:34  
10:36:36  
10:36:41  
10:36:45  
10:36:51  
10:37:01  
10:37:07

1 Q. You knew that from Mr. Bidsal?

2 A. Yes. I knew he was working on deed.

3 Q. Was that discussed in this first meeting as well

4 or not?

5 A. We -- they just mentioned.

6 Q. So the operating agreement actually was not

7 signed until approximately December 12th. So did you

8 have an understanding of why it took so long to get that

9 operating agreement for Green Valley executed?

10 A. Well, I didn't understand. It was just a simple

11 operating agreement. We had a lawyer. Everybody was

12 there, but it was delayed and delayed. It was not

13 right.

14 Q. Did you ask Mr. Bidsal what was taking so long?

15 A. Yes. I asked him and he mentioned that he was

16 busy and he would take care of it. And then weeks

17 passed and then nothing would happen and I started

18 getting anxious.

19 Q. Why were you anxious?

20 A. Because I had put a huge amount of money in,

21 about 4 million dollars in both projects, and I didn't

22 have a piece of paper to show that I was the owner. I

23 had shares and, you know, there was no -- I wouldn't get

24 any response, a favorable response that okay, let's sit

25 down and finish this operating agreement. He would say,

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10:37:11 1 "We'll do it. It takes time."

10:37:14 2 Q. When you say 4 million dollars, are you including

10:37:18 3 the money that you put up as capital for Country Club?

10:37:21 4 A. Yes. I put 2.8 here and the rest was there.

10:37:26 5 Q. Did you also talk about the time it was taking to

10:37:32 6 sign the operating agreement with Mr. LeGrand?

10:37:35 7 A. Well, at one point in time I talked to

10:37:40 8 Mr. Bidsal, and I said, "What is the hang up? Why

10:37:46 9 doesn't progress."

10:37:48 10 He said, "Mr. LeGrand says because of the

10:37:51 11 disparity of the capital, we need a formula to address

10:37:58 12 this. It's not like a straightforward thing."

10:38:02 13 I said, "So why don't they do the formula? They

10:38:08 14 said it is complicated, so I started getting involved to

10:38:12 15 see what is what and expedite.

10:38:16 16 Q. Okay. So will you take a look at Exhibit 6?

10:38:28 17 ARBITRATOR WALL: Make a spot where it makes

10:38:31 18 sense to take a short break.

10:38:35 19 MR. LEWIN: Let me get through this part.

10:38:39 20 ARBITRATOR WALL: Okay.

10:38:52 21 MR. LEWIN: Actually, I want to go to exhibit --

10:38:59 22 before Exhibit 6.

10:38:59 23 BY MR. LEWIN:

10:39:04 24 Q. Well, looking at Exhibit 6, the first -- there's

10:39:07 25 a series of Emails. The first one on it is the Email

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10:39:17 1 from November 29, 2011 that says, "Ben, attached find  
10:39:23 2 the revised OPAG with right of first refusal."  
10:39:30 3 Did you receive this?  
10:39:31 4 A. I think so. Yes.  
10:39:37 5 Q. I'd like to call your attention to -- I can set  
10:39:41 6 it up as a separate exhibit. I'd like to go to  
10:39:46 7 Exhibit 198 to Exhibit 26.  
10:39:53 8 A. 26?  
10:39:56 9 MR. LEWIN: That portion of Exhibit 198.  
10:39:59 10 ARBITRATOR WALL: You've got to get him a  
10:40:01 11 different book.  
10:40:15 12 THE WITNESS: I go up to 193.  
10:40:17 13 MR. GERRARD: Which number?  
10:40:19 14 ARBITRATOR WALL: 26.  
10:40:21 15 MR. GARFINKEL: Which is it?  
10:40:38 16 ARBITRATOR WALL: 198, and then Exhibit 26 within  
10:40:41 17 198. He's already looked at 198 before, so that book  
10:40:47 18 should be up there somewhere, because he looked at  
10:41:03 19 Exhibit 40 within 198.  
10:41:05 20 MR. GARFINKEL: The problem is I have theirs. Is  
10:41:13 21 it theirs or yours?  
10:41:17 22 MR. LEWIN: Here it is. I'm sorry. I'm sorry.  
10:41:23 23 MR. GARFINKEL: Here you go.  
10:41:26 24 THE WITNESS: Thank you.  
10:41:29 25 MR. GARFINKEL: 198.

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10:41:29 1 BY MR. LEWIN:

10:41:43 2 Q. Exhibit 26 --

10:41:54 3 ARBITRATOR WALL: Any objection to Exhibit 26

10:41:56 4 within 198?

10:41:58 5 MR. GERRARD: No.

10:42:09 6 (Exhibit 26 was admitted into evidence.)

10:42:09 7 THE WITNESS: Do you know the DL number?

10:42:12 8 MR. GARFINKEL: Bates number.

10:42:15 9 MR. LEWIN: Just look for Exhibit 26.

10:42:25 10 THE WITNESS: I know I see 25 but --

10:42:29 11 MR. GARFINKEL: Sir, just keep going. Here you

10:43:15 12 go.

10:43:15 13 THE WITNESS: Thank you.

10:43:16 14 MR. GARFINKEL: No problem.

10:43:16 15 BY MR. LEWIN:

10:43:18 16 Q. Do you have that in front of you?

10:43:19 17 A. Yes.

10:43:19 18 Q. We earlier saw Mr. LeGrand had sent in a document

10:43:24 19 with an operating agreement with right of first refusal,

10:43:29 20 and later, on this Exhibit 26, at 5:06 he sent another

10:43:34 21 version with the buy/sell agreement.

10:43:55 22 Looking at the -- looking at Exhibit -- you

10:44:07 23 received the operating agreement with the buy/sell

10:44:10 24 agreement. Is that correct?

10:44:11 25 A. At one point in time, yes.

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10:44:13 1 MR. LEWIN: This will be a good time to take a  
10:44:17 2 break, Your Honor.  
10:44:20 3 ARBITRATOR WALL: Off the record.  
10:44:28 4 \*\*\*  
5 (RECESS TAKEN FROM 10:44 A.M. TO 11:03 A.M.)  
6 \*\*\*  
7 Whereupon,  
8 JEFF CHAIN,  
9 having first been called as a witness, was duly sworn  
11:03:38 10 and testified as follows:  
11:03:38 11 ARBITRATOR WALL: Is it Jeff, J-E-F-F, Chain,  
11:30:47 12 C-H-A-I-N?  
11:30:50 13 THE WITNESS: Yes, it is.  
11:30:50 14 ARBITRATOR WALL: I'm going to turn you over to  
11:30:52 15 Mr. Lewin.  
11:30:52 16 EXAMINATION  
11:30:54 17 BY MR. LEWIN:  
11:30:54 18 Q. Good morning, Mr. Chain. Thank you for joining  
11:30:56 19 us today. Would you mind telling His Honor what kind of  
11:31:04 20 work you do?  
11:31:05 21 A. I'm a commercial real estate broker in Las Vegas.  
11:31:08 22 Q. And how long have you been a commercial real  
11:31:12 23 estate broker?  
11:31:12 24 A. 40-plus years.  
11:31:14 25 Q. And you hold a license with the State of Nevada?

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11:31:18 1 A. I do. A broker's license.

11:31:21 2 Q. And how long have you held that broker's license?

11:31:26 3 A. Probably 30 years.

11:31:29 4 Q. And do you have a company that you work with?

11:31:37 5 A. Yes. Millennium Commercial Properties.

11:31:44 6 ARBITRATOR WALL: Hold on. Let me stop you.

11:31:48 7 Is your volume on as loud as it will go? Your

11:32:03 8 computer volume.

11:32:03 9 (Discussion off the record.)

11:32:03 10 BY MR. LEWIN:

11:33:26 11 Q. Mr. Chain, would you keep your voice up so that

11:33:30 12 everyone can hear you? Try to do that?

11:33:33 13 A. Yes.

11:33:34 14 Q. Okay. We were talking about Millennium

11:33:38 15 properties. How long have you had that business?

11:33:41 16 A. 25-plus years.

11:33:44 17 Q. And what kind of business does Millennium

11:33:53 18 property do? Commercial properties? Residential

11:33:56 19 properties? Or some other --

11:33:58 20 A. It just does commercial properties.

11:34:00 21 Q. Has that been your experience over the past 30 or

11:34:04 22 so years?

11:34:05 23 A. Yes, it has.

11:34:06 24 Q. And do you know Shawn Bidsal?

11:34:11 25 A. I do.



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11:34:11 1 Q. And when did you first meet Mr. Bidsal?

11:34:15 2 A. 25, 30 years ago.

11:34:18 3 Q. And do you know Ben Golshani?

11:34:23 4 A. I do.

11:34:24 5 Q. How long have you known Mr. Golshani?

11:34:28 6 A. It will be between 10 and 15 years.

11:34:31 7 Q. And do you remember when you first met

11:34:35 8 Mr. Golshani?

11:34:38 9 A. Some point in the late '08, '09, '07. Somewhere

11:34:45 10 in that range.

11:34:46 11 Q. And do you remember in connection with -- have

11:34:55 12 you ever had any conversations with Mr. Golshani and

11:34:58 13 Mr. Bidsal about opportunities to buy either distressed

11:35:04 14 properties or nonperforming loans?

11:35:06 15 A. Yes, I did.

11:35:07 16 Q. And do you remember when that took place?

11:35:10 17 A. Probably '08, '09. Right after the crash

11:35:16 18 happened.

11:35:17 19 Q. You were the broker regarding the -- I'm going to

11:35:22 20 do this for a time frame. You were the broker for the

11:35:27 21 purchase of a loan package relating to Green Valley in

11:35:33 22 Henderson. Do you recall?

11:35:35 23 A. Yes, I do.

11:35:37 24 MR. LEWIN: Spencer, would you put up Exhibit 3?

11:35:51 25 ARBITRATOR WALL: You know what? While he's

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11:35:53 1 doing that, let's try having him mute his phone and use  
11:35:59 2 his computer audio. Page 1059  
11:36:01 3 MR. LEWIN: Can you try muting your phone and  
11:36:03 4 just using the computer audio and see if that works?  
11:36:09 5 THE WITNESS: Okay. Are you able to still hear  
11:36:30 6 me?  
11:36:30 7 ARBITRATOR WALL: Is that any better?  
11:36:30 8 THE REPORTER: Ask him to say something again.  
11:36:39 9 ARBITRATOR WALL: Count to ten for me.  
11:36:39 10 THE WITNESS: (Complied.)  
11:36:39 11 ARBITRATOR WALL: Okay. Go ahead.  
11:36:39 12 BY MR. LEWIN:  
11:36:45 13 Q. Would you please take a look at a final  
11:36:47 14 settlement statement that should be on your screen  
11:36:49 15 that's dated June 3rd, 2011?  
11:36:54 16 A. I see it.  
11:36:55 17 Q. So do you recall ever discussing this business  
11:37:01 18 opportunity with Mr. Bidsal or Mr. Golshani?  
11:37:05 19 A. Looking -- we were looking at a large list of  
11:37:11 20 properties and then talking to Mr. Bidsal and Ben on  
11:37:15 21 numerous times back in that era, kind of finding a  
11:37:20 22 package to purchase.  
11:37:21 23 Q. Now, this closing took place on June 3rd, 2011.  
11:37:27 24 Were you involved with Mr. Bidsal and Mr. Golshani in  
11:37:30 25 looking for purchase opportunities in 2010?

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11:37:36 1 A. I believe so, yes.

11:37:37 2 Q. And did you have a meeting with them where they  
11:37:44 3 discussed what they wanted to purchase?

11:37:46 4 A. Yes.

11:37:47 5 Q. Can you tell us when the first of those meetings  
11:37:52 6 were, or have they sort of merged in your memory?

11:37:57 7 A. We looked at hundreds of properties back in that  
11:38:00 8 time, so I couldn't tell you. I couldn't narrow down a  
11:38:04 9 date.

11:38:05 10 Q. Did they describe their relationship to you, what  
11:38:10 11 they were doing together?

11:38:11 12 A. They were together a lot of times, and my  
11:38:15 13 understanding is they were going to purchase X amount of  
11:38:20 14 properties, and acquired this one and another one.

11:38:26 15 Q. Now, did you recommend this Green Valley purchase  
11:38:35 16 to them or did they come to you with it?

11:38:37 17 A. I was going through hundreds of properties, and  
11:38:43 18 we would narrow them down and send them off to ones I  
11:38:47 19 thought made sense.

11:38:48 20 Q. And would you have been doing that in 2010 as  
11:38:52 21 well as 2011?

11:38:54 22 A. Probably.

11:38:55 23 Q. Was this the first purchase that they had, as far  
11:39:01 24 as you know?

11:39:02 25 A. I don't know if this was first or Horizon Ridge

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11:39:08 1 was first, but they were relatively close together. Page 1061

11:39:12 2 Q. You said Horizon Ridge. Is that also known as

11:39:16 3 the Country Club property?

11:39:18 4 A. Yes.

11:39:18 5 Q. So prior to the bidding for this Green Valley

11:39:27 6 note package, you said that you had referred them to

11:39:32 7 hundreds of properties?

11:39:35 8 A. I probably went through hundreds. Probably sent

11:39:41 9 them 50. Could have been more.

11:39:44 10 Q. When you sent them recommendations out, did you

11:39:48 11 send them to Mr. Bidsal, Mr. Golshani, or both of them?

11:39:52 12 A. I'm sure sometimes one, sometimes the other, and

11:39:56 13 lots of times both.

11:39:58 14 Q. Regarding the -- strike that.

11:40:03 15 Were some of these properties to be

11:40:06 16 potentially -- or the opportunities to purchase through

11:40:10 17 Auction.com?

11:40:11 18 A. Correct.

11:40:12 19 Q. And with respect to this Green Valley/Henderson

11:40:18 20 loan package, this was a purchase of a note and security

11:40:22 21 documents. Right?

11:40:24 22 A. Correct.

11:40:24 23 Q. Did you attend the bidding for this property at

11:40:30 24 the auction with Mr. Golshani and Mr. Bidsal?

11:40:33 25 A. Yes.

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11:40:34

1 Q. Was anyone else there that you recall?

11:40:37

2 A. It was in an auditorium. I believe it was at

11:40:43

3 Cashman Field. I believe on our team we were the only

11:40:48

4 ones present.

11:40:48

5 Q. Did you observe how Mr. Golshani and Mr. Bidsal

11:40:52

6 actually conducted the bidding?

11:40:54

7 A. I believe I was typing the numbers in. They were

11:40:59

8 discussing the numbers.

11:41:00

9 Q. And then would you explain to His Honor how that

11:41:05

10 process worked?

11:41:07

11 A. Um, they post the auction about ten days before

11:41:13

12 they put up a due diligence. Go through and open the

11:41:17

13 auction 72ish, 96 hours prior, and the bid changes every

11:41:23

14 five minutes. Then as it gets close to what they

11:41:30

15 believe the end is, they reduce the increments down to

11:41:36

16 2 minutes and ultimately got down to 30 seconds. You

11:41:41

17 would submit a bid and then you could (inaudible)

11:41:46

18 whatever guidance they had in the platform at that time.

11:41:50

19 Starting at \$100,000 increments. Towards the end it

11:41:54

20 would be a few thousand dollar increments.

11:41:57

21 Q. You were typing in the bidding by Mr. Golshani

11:42:00

22 and Mr. Bidsal?

11:42:01

23 A. I was.

11:42:02

24 Q. And do you recall, were you getting instructions

11:42:04

25 from one of them, both of them, or either one of them?

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11:42:08 1 A. Probably either one. We were all sitting Page 1063  
11:42:13 2 together, so it was a very dynamic situation.  
11:42:18 3 Q. Did you ever hear Mr. Bidsal or Mr. Golshani say  
11:42:25 4 who put up the proof of funds for this bidding?  
11:42:29 5 A. I don't recall.  
11:42:31 6 Q. Okay. Did -- strike that.  
11:42:43 7 Now, I had --  
11:42:47 8 MR. LEWIN: Your Honor, there's a part of  
11:42:48 9 Exhibit 50 in evidence but not the entire 50 that I  
11:42:53 10 wanted to display to Mr. Chain, but I was going to make  
11:43:00 11 it as a separate exhibit since I wanted to put in --  
11:43:10 12 ARBITRATOR WALL: 50 is in evidence.  
11:43:12 13 MR. LEWIN: I have excerpted the pages I want.  
11:43:18 14 ARBITRATOR WALL: Why? 50 is already in.  
11:43:20 15 MR. LEWIN: Because -- okay.  
11:43:22 16 MR. GARFINKEL: Which one?  
11:43:28 17 MR. LEWIN: Spencer, please display Exhibit 50.  
11:43:28 18 BY MR. LEWIN:  
11:43:31 19 Q. While he's doing that, Mr. Chain, after the  
11:43:35 20 bidding was successful and title of the property was  
11:43:39 21 obtained, did you list any of the properties for sale?  
11:43:44 22 A. At one point I had buildings on -- Country Club  
11:43:51 23 buildings listed as well as the Green Valley buildings  
11:43:54 24 listed.  
11:43:55 25 Q. In connection to -- and I'd like to, if we could,

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11:44:02 1 look on Exhibit 50 --

11:44:07 2 MR. LEWIN: Spencer -- you have Exhibit 50 on

11:44:10 3 your screen? Yes. Here we go.

11:44:10 4 BY MR. LEWIN:

11:44:14 5 Q. So if you could look at -- I'm going to refer you

11:44:17 6 to Pages 620 through -- there's an assortment of pages

11:44:26 7 here. Start at 620. Would you take a look at

11:44:30 8 Exhibit 620, and was this -- and tell us in the

11:44:35 9 succeeding pages what those pages are. I think they're

11:44:39 10 your flyers. I just want you to focus on that part.

11:44:43 11 A. Looks like an Email from myself to Shawn

11:44:45 12 regarding the Green Valley commercial.

11:44:52 13 MR. LEWIN: Spencer, would you scroll through the

11:44:57 14 next page, please? Just keep scrolling, Spencer, so

11:45:04 15 Mr. Chain can look at what we're talking about to the

11:45:08 16 end of the flyer. The last page, which is 633.

11:45:08 17 BY MR. LEWIN:

11:45:49 18 Q. So, Mr. Chain, what are these documents that you

11:45:52 19 just looked at?

11:45:53 20 A. Looks like an old marketing brochure that I would

11:45:57 21 have put out into various commercial listing sites.

11:46:00 22 Q. Were you able to sell any of the buildings in the

11:46:04 23 Green Valley Center?

11:46:05 24 A. We sold, I think, a couple of them. Possibly

11:46:11 25 three. We sold the pharmacy building. I think the one

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11:46:15 1 in the back.

11:46:16 2 Q. And at some point in time -- and I'm not going to  
11:46:20 3 go into this because this is sort of a separate issue,  
11:46:23 4 but to put some perspective on this. At some point in  
11:46:27 5 time was your company actually managing the Green Valley  
11:46:30 6 Center?

11:46:30 7 A. For a short period of time we managed the Green  
11:46:34 8 Valley Center, yes. We didn't take care of any of the  
11:46:44 9 financial sides. Just managed it from tenant showings,  
11:46:49 10 tenant relations. That was it.

11:47:01 11 MR. LEWIN: One sec, please.

11:47:01 12 BY MR. LEWIN:

11:47:06 13 Q. At the time that you began listing the  
11:47:11 14 properties, how many buildings were there, if you  
11:47:14 15 recall?

11:47:15 16 A. Eight or nine, I think.

11:47:19 17 Q. And did you recommend David LeGrand to Shawn  
11:47:27 18 Bidsal?

11:47:27 19 A. Yes, I did.

11:47:28 20 Q. Did Mr. Bidsal ever tell you that after the  
11:47:31 21 auction that he was going to try to find another  
11:47:34 22 investor to replace Ben?

11:47:36 23 A. Not that I recall.

11:47:39 24 Q. Okay. All right.

11:47:43 25 MR. LEWIN: I have nothing else.



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11:47:45 1 ARBITRATOR WALL: All right. Mute yours, please. Page 1066

11:47:48 2 MR. GERRARD: Give me one minute.

11:47:52 3 ARBITRATOR WALL: Yeah.

11:48:19 4 Can you take down the exhibit?

11:48:23 5 MR. LEWIN: Spencer, please remove the exhibit.

11:48:23 6 EXAMINATION

11:48:23 7 BY MR. GERRARD:

11:48:29 8 Q. Can you hear me, Mr. Chain?

11:48:30 9 A. Yes, I can.

11:48:32 10 Q. My name is Doug Gerrard. I represent Shawn

11:48:35 11 Bidsal in this matter. Is it true, sir, that you've

11:48:38 12 been working with Mr. Bidsal for over 30 years?

11:48:42 13 A. I've known for Shawn for probably 30-plus years,

11:48:47 14 yes.

11:48:47 15 Q. Okay. Thinking back in time -- well, first, let

11:48:51 16 me just ask you this: Do you actually have an

11:48:55 17 independent recollection of when you first met

11:48:57 18 Mr. Golshani?

11:49:02 19 I didn't hear the answer. Say it again.

11:49:07 20 ARBITRATOR WALL: Stop. Did you turn your volume

11:49:10 21 down?

11:49:11 22 MR. GERRARD: Just a second, Mr. Chain.

11:49:14 23 MR. LEWIN: Do I need to keep it up?

11:49:18 24 ARBITRATOR WALL: Turn yours off.

11:49:18 25 ///

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11:49:18

1 BY MR. GERRARD:

11:49:21

2 Q. Okay. Try that again, Mr. Chain. Do you

11:49:23

3 actually have an independent recollection when you first

11:49:26

4 met Mr. Golshani?

11:49:31

5 A. No, I do not.

11:49:33

6 Q. When you said perhaps it could have been 2008 or

11:49:37

7 2009, that was just a guess, wasn't it?

11:49:39

8 A. Yes.

11:49:39

9 Q. And in terms of the number of properties that you

11:49:46

10 actually showed to Mr. Golshani and Mr. Bidsal, do you

11:49:51

11 actually have a specific recollection of how many there

11:49:54

12 were?

11:49:54

13 A. I do not. I said it was probably around 50, but

11:49:59

14 I have nothing to base that number on.

11:50:01

15 Q. And was the 50, was that actually physically

11:50:05

16 going out and showing them a property or where you sent

11:50:08

17 them information about a property?

11:50:10

18 A. Combination. Sometimes I would take a big list

11:50:14

19 and try to whittle it down to a smaller list and send

11:50:19

20 them off and then ones that -- we walked a lot of

11:50:24

21 property.

11:50:25

22 Q. So can you estimate how long it was from the

11:50:28

23 first time that you met Mr. Golshani to the time that

11:50:33

24 this first auction took place? We know the auction was

11:50:37

25 in May of 2011. Would this process of sending

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11:50:42 1 information about properties have started any earlier  
11:50:45 2 than a few months before that?

11:50:46 3 A. Yes.

11:50:47 4 Q. Okay. How many months before that?

11:50:49 5 A. Probably a year before. They were shown tens of  
11:50:59 6 thousands in that time frame.

11:51:01 7 Q. Tens of thousands of properties to these two  
11:51:05 8 individuals?

11:51:05 9 A. No. I look at buildings all day long, so I have  
11:51:10 10 no idea how many we looked at specifically related to  
11:51:14 11 that transaction or ultimately that transaction.

11:51:17 12 Q. Sure. I guess that's what I'm trying to find  
11:51:20 13 out. I'm trying to find out how much you actually  
11:51:22 14 remember from your own independent recollection.

11:51:25 15 A. It was 12 years ago, so...

11:51:30 16 Q. Did you speak with Mr. Lewin about your testimony  
11:51:34 17 today?

11:51:34 18 A. I got a subpoena from him and he sent me a couple  
11:51:39 19 documents and that was about it. We didn't discuss much  
11:51:44 20 else.

11:51:44 21 Q. Did you actually have a conversation with him?

11:51:46 22 A. Yes, I did.

11:51:47 23 Q. Did you talk about when you first met with  
11:51:50 24 Mr. Golshani and first started showing properties to  
11:51:53 25 him?

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11:51:53 1 A. He might have asked, and I probably would have  
11:51:58 2 given the same answer. As far as I know, the '08/'09  
11:52:05 3 range.

11:52:05 4 Q. Do you have any actual documentation in your  
11:52:08 5 files that would reflect when you first met  
11:52:11 6 Mr. Golshani?

11:52:12 7 A. I do not.

11:52:12 8 Q. Okay. Any Emails that you sent him with  
11:52:15 9 information?

11:52:16 10 A. Not from that time frame, no.

11:52:19 11 Q. Okay. Did you go back and look for Emails that  
11:52:23 12 you sent to Mr. Golshani?

11:52:24 13 A. I did, and I didn't have any -- I don't have any  
11:52:29 14 Email records from that period. I had a major computer  
11:52:34 15 issue five or six years ago that wiped out a lot of that  
11:52:40 16 stuff.

11:52:40 17 Q. What was the earliest you could find that you  
11:52:45 18 sent to Mr. Golshani?

11:52:46 19 A. Didn't pay attention, so I don't know.

11:52:48 20 Q. Wasn't 2008 or 2009, was it?

11:52:51 21 A. I have no records from then.

11:52:53 22 Q. Did you speak with Mr. Golshani prior to your  
11:52:55 23 testimony today?

11:52:56 24 A. Only -- he called me probably six months ago and  
11:53:02 25 said "Can we subpoena you and will you testify," and I

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11:53:07 1 said "I'm uncomfortable," and he said, "Subpoena. I  
11:53:11 2 don't have a choice."  
11:53:13 3 Q. Did you talk about the time frame when you met  
11:53:15 4 him?  
11:53:15 5 A. I did not.  
11:53:16 6 Q. Did you talk to him about how many properties you  
11:53:19 7 may have looked at before there was any auction?  
11:53:23 8 A. I did not.  
11:53:24 9 Q. And did he send you any documents to review?  
11:53:28 10 A. He did not.  
11:53:29 11 Q. You mentioned Mr. Lewin sent you some documents  
11:53:33 12 to review?  
11:53:33 13 A. He did.  
11:53:34 14 Q. What documents did he send you?  
11:53:45 15 A. He sent me two things. One Email has a loan sale  
11:53:53 16 agreement which is blank, an executive summary and terms  
11:54:00 17 and conditions from Auction.com. Didn't really mean  
11:54:03 18 anything. And then 50 GBC properties, leases, and  
11:54:11 19 advertisements that Mr. Bidsal had been marketing the  
11:54:14 20 property.  
11:54:14 21 Q. So you were shown an exhibit a few moments ago.  
11:54:18 22 Exhibit 50 had some marketing materials for some of the  
11:54:21 23 properties in this Green Valley Commerce group.  
11:54:24 24 Correct?  
11:54:24 25 A. Correct.

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11:54:25 1 Q. And it showed that those marketing materials were  
11:54:30 2 dated in August of 2012. Correct?  
11:54:32 3 A. Correct.  
11:54:33 4 Q. You don't recall ever attempting to market these  
11:54:38 5 properties prior to that, do you?  
11:54:39 6 A. Um, you know, it was a long time ago. I don't  
11:54:48 7 know what date we officially started marketing.  
11:54:51 8 Q. Okay. But the only documents that you've seen  
11:54:54 9 are these documents showing a date in August of 2012.  
11:54:58 10 Correct?  
11:54:58 11 A. Correct.  
11:54:59 12 Q. And you don't have any independent recollection  
11:55:01 13 of anything happening prior to that. Correct?  
11:55:03 14 A. I do not know when we started marketing.  
11:55:07 15 Q. Okay. Do you know if there was any discussion  
11:55:10 16 during the time that the bidding was going on about what  
11:55:14 17 the plan was going to be for these properties, other  
11:55:17 18 than to manage them?  
11:55:18 19 A. The plan was always to sell them off  
11:55:23 20 individually, as they're worth more on an individual  
11:55:28 21 basis than as a package.  
11:55:30 22 Q. What do you base that testimony on? Off an  
11:55:34 23 actual recollection of them talking about that time?  
11:55:38 24 A. My experience as a real estate breaker.  
11:55:42 25 ARBITRATOR WALL: Hold on.

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11:55:43 1 MR. GERRARD: Hold on a moment, sir. Page 1072

11:55:51 2 ARBITRATOR WALL: Open your camera so he can see

11:55:55 3 who he's talking to.

11:55:58 4 MR. GERRARD: Now you can see me. I didn't

11:56:00 5 realize I wasn't on.

11:56:00 6 BY MR. GERRARD:

11:56:02 7 Q. I know, sir, there was a plan to market and sell

11:56:04 8 the properties. We looked at documents associated with

11:56:07 9 that. Correct?

11:56:08 10 A. Um, correct.

11:56:09 11 Q. But my question was really more towards when was

11:56:17 12 that plan first developed?

11:56:19 13 A. It was the genesis of what the properties we were

11:56:22 14 looking for were valued at properties and finding an

11:56:27 15 office complex or retail complex that we can divide and

11:56:31 16 sell individually.

11:56:32 17 Q. Okay. So that's your understanding generally of

11:56:34 18 what types of properties they were looking for?

11:56:37 19 A. That's my understanding, yes.

11:56:41 20 MR. GERRARD: I don't have any other questions.

11:56:45 21 ARBITRATOR WALL: Do you have any?

11:56:47 22 MR. LEWIN: No. No further questions.

11:56:57 23 ARBITRATOR WALL: All right, Mr. Chain. Thank

11:56:59 24 you very much. You can disconnect both of them.

11:57:02 25 THE WITNESS: Both of them. Okay.

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11:57:04 1 ARBITRATOR WALL: All right. We're going to take  
 11:57:11 2 our luncheon recess now. I'm going to try the other  
 11:57:15 3 room as well and see if that works better.  
 11:57:17 4 \*\*\*  
 11:57:17 5 (RECESS TAKEN FROM 11:57 P.M. TO 12:57 P.M.)  
 12:57:30 6 \*\*\*  
 12:57:30 7 ARBITRATOR WALL: Okay. So it's 1:01, so we've  
 13:01:31 8 got a half hour of testimony for Mr. Golshani. Is that  
 13:01:36 9 right?  
 13:01:37 10 MR. GARFINKEL: That's right.  
 13:01:42 11 ARBITRATOR WALL: Mr. Golshani, do you realize  
 13:01:45 12 you're still under oath?  
 13:01:47 13 THE WITNESS: Yes, Your Honor.  
 13:01:48 14 ARBITRATOR WALL: Is everyone ready to go?  
 13:01:52 15 MR. GERRARD: Getting there. Yes. I'm fine.  
 13:01:57 16 All right.  
 13:01:59 17 ARBITRATOR WALL: All right. Is your other half  
 13:02:01 18 on?  
 13:02:05 19 MR. LEWIN: He said he got kicked off, but he  
 13:02:08 20 doesn't have to be here for Mr. Golshani.  
 13:02:11 21 ARBITRATOR WALL: He shouldn't have gotten kicked  
 13:02:14 22 off.  
 13:02:14 23 CONTINUED EXAMINATION  
 13:02:14 24 BY MR. LEWIN:  
 13:02:39 25 Q. Mr. Golshani, you heard Mr. Chain testify that he



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13:02:49 1 first met you in 2008 or 2009. Was he mistaken about  
13:02:54 2 that?  
13:02:55 3 A. I think we met, you know, through Mr. Bidsal in  
13:03:01 4 2010. I'm sorry. Or even '11.  
13:03:06 5 Q. He testified that several buildings --  
13:03:18 6 individual -- was the -- was the plan to sell all the  
13:03:22 7 buildings one by one or was the plan to sell some of  
13:03:25 8 them?  
13:03:26 9 MR. GERRARD: Objection. Leading.  
13:03:27 10 ARBITRATOR WALL: Overruled.  
13:03:29 11 A. The plan was to sell a few of them and then get  
13:03:36 12 the capital back and try to reimburse the other project  
13:03:42 13 and see what the situation -- actual situation is for  
13:03:48 14 the rest.  
13:03:48 15 BY MR. LEWIN:  
13:03:49 16 Q. You heard Mr. Bidsal testify that you did not  
13:03:54 17 want to sell. He had to convince you to sell buildings.  
13:03:58 18 Is he telling the truth?  
13:03:59 19 A. No. We had discussed that long time before that.  
13:04:04 20 Q. And you had -- at the time what was your total  
13:04:08 21 capital investment -- let me start over.  
13:04:14 22 At the time that any the buildings were first  
13:04:17 23 listed for sale, how much money had you invested into  
13:04:21 24 Green Valley?  
13:04:22 25 A. In the beginning, about \$2.8 million.

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13:04:27 1 Q. Were you still looking for properties with  
13:04:30 2 Mr. Bidsal after the Green Valley note was filed?  
13:04:35 3 A. I was not interested in the loans anymore and  
13:04:38 4 looking for regular properties.  
13:04:40 5 Q. Now, do you know when -- there was -- do you know  
13:04:55 6 when the survey was completed?  
13:04:58 7 A. Yes.  
13:04:59 8 MR. GERRARD: Objection. Best evidence rule.  
13:05:01 9 ARBITRATOR WALL: I don't know what we have.  
13:05:07 10 MR. GERRARD: That's factually the point. They  
13:05:09 11 didn't put it in and they're asking about a document  
13:05:13 12 from 12 years ago that he did not prepare and he  
13:05:18 13 doesn't -- and we don't have the actual document which  
13:05:20 14 would answer the question. They didn't put it into  
13:05:23 15 evidence. That's why it's the best evidence rule  
13:05:26 16 objection.  
13:05:27 17 MR. LEWIN: We talked with Mr. Bidsal about it.  
13:05:34 18 There is a document. Please look at Exhibit 7, which is  
13:05:37 19 the CC&Rs. Maybe I should wait until you rule on the  
13:05:47 20 objection. Sorry.  
13:05:49 21 ARBITRATOR WALL: If you're going to do it this  
13:05:50 22 way, then there is no objection pending.  
13:05:53 23 MR. LEWIN: Okay.  
13:05:53 24 BY MR. LEWIN:  
13:05:58 25 Q. What is Exhibit 7, Mr. Golshani?

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13:06:00 1 A. This is the CC&R and -- and the pertaining  
13:06:08 2 documents.

13:06:08 3 Q. Is the survey attached to these CC&Rs?

13:06:12 4 A. Yes, sir.

13:06:12 5 Q. Would you please take a look at the documents  
13:06:15 6 beginning at Page 1411 and see if that helps you --

13:06:29 7 A. No.

13:06:30 8 Q. -- when the survey was completed?

13:06:32 9 A. The survey was completed August 2, 2011.

13:06:35 10 Q. Okay. And there was a record of survey that was  
13:06:40 11 recorded. Is that correct?

13:06:45 12 A. Yes.

13:06:46 13 Q. When was the record of survey recorded?

13:06:49 14 A. The recordation was August -- October, I believe,  
13:06:56 15 7 of '10 or 2011.

13:07:00 16 Q. You indicated that you were familiar with the  
13:07:01 17 subdivision process?

13:07:03 18 A. Yes.

13:07:03 19 Q. What is the difference between having the survey  
13:07:07 20 actually completed and the record?

13:07:09 21 A. When the surveyor does his job, he can -- he  
13:07:15 22 would subdivide it and he would prepare the legal  
13:07:20 23 description and -- which goes into the documents, and  
13:07:26 24 when you do CC&R is when you form a homeowner  
13:07:34 25 association, and you have some legal process to do that.

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13:07:39 1 ARBITRATOR WALL: Let me stop you there.

13:07:45 2 I want Mr. Lewin to confirm that he can hear us.

13:07:55 3 MR. S. LEWIN: Yes, I can hear you.

13:07:58 4 ARBITRATOR WALL: Outstanding. Thank you.

13:07:58 5 BY MR. LEWIN:

13:08:11 6 Q. Now, the operating agreement -- turn to

13:08:17 7 Exhibit 5. This is the operating agreement which was

13:08:28 8 signed -- everyone's testified that it was signed

13:08:37 9 December 2011?

13:08:37 10 A. Yes.

13:08:38 11 Q. Before it was signed, you talked about the

13:08:55 12 first -- you talked about the first meeting you had with

13:08:58 13 Mr. LeGrand. Was there subsequent meetings?

13:09:01 14 A. I don't remember with him.

13:09:02 15 Q. All right. But at some point in time in terms

13:09:22 16 of -- start over.

13:09:23 17 Did you have telephonic meetings with Mr. LeGrand

13:09:29 18 and Mr. Bidsal?

13:09:30 19 A. Probably, yes.

13:09:31 20 Q. Do you remember or not?

13:09:32 21 A. I remember a lot of telephone calls, but if

13:09:36 22 you're talking about the conference call, my -- I don't

13:09:43 23 remember. Long way.

13:09:48 24 Q. You heard Mr. Gerrard and Mr. Bidsal say that

13:09:52 25 according to Exhibit B, that the waterfall is not

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13:09:56 1 triggered unless there is a sale of all or substantially  
13:10:00 2 all of the assets or a cash offer at financing. You  
13:10:07 3 heard that statement?

13:10:08 4 A. Yes.

13:10:09 5 Q. You also heard Mr. Wilcox when he testified -- go  
13:10:15 6 through a scenario where he ended up with Mr. Bidsal  
13:10:19 7 having a negative capital account -- the possibility of  
13:10:23 8 a negative capital account. You heard that?

13:10:27 9 A. Yes.

13:10:28 10 MR. GERRARD: Misstates the witness's testimony.

13:10:32 11 ARBITRATOR WALL: Let's get to the question  
13:10:34 12 rather than what he heard someone say.

13:10:34 13 BY MR. LEWIN:

13:10:36 14 Q. Prior to signing the operating agreement, did  
13:10:39 15 anyone discuss with you the possibility of you being a  
13:10:43 16 creditor relying on Mr. Bidsal to make up any deficiency  
13:10:48 17 in his capital account?

13:10:50 18 A. No.

13:10:50 19 Q. Would you have signed the operating agreement  
13:10:53 20 where there were scenarios where you would end up with a  
13:10:57 21 positive capital account and Mr. Bidsal with a negative  
13:11:02 22 and the only remedy was for him to pay it back?

13:11:06 23 A. No.

13:11:07 24 MR. GERRARD: Objection -- go ahead. I withdraw  
13:11:11 25 the objection.

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13:11:11 1 BY MR. LEWIN:

13:11:13 2 Q. Your answer was?

13:11:14 3 A. No.

13:11:14 4 Q. Would you have signed the operating agreement if

13:11:17 5 you thought you can only recover your capital account on

13:11:20 6 the sale of the last building?

13:11:22 7 A. No, I would not.

13:11:26 8 Q. Now, in terms of getting title from the borrower,

13:11:37 9 just take a look at Exhibit 8. That's the deed in lieu

13:11:41 10 agreement?

13:11:41 11 A. All right.

13:11:44 12 Q. Did you receive that agreement before this

13:11:47 13 arbitration started?

13:11:48 14 A. Yes.

13:11:48 15 Q. When did you first see it?

13:11:51 16 A. I don't remember, but fairly recently after the

13:12:00 17 second arbitration.

13:12:01 18 Q. You mean the first arbitration?

13:12:03 19 A. Yeah. Before the second.

13:12:06 20 Q. Did Mr. Bidsal ever tell you there was no closing

13:12:09 21 statement with respect to the transfer of title?

13:12:14 22 A. No.

13:12:15 23 Q. Did he ever talk to you about closing -- doing an

13:12:21 24 agreement with the borrowers and not getting a closing

13:12:25 25 statement?

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13:12:25 1 A. No.

13:12:27 2 Q. Had he told you that there was no closing

13:12:33 3 statement, would you have objected to him closing the

13:12:37 4 deal with the borrowers unless there was a closing

13:12:40 5 statement?

13:12:41 6 A. Yes.

13:12:41 7 MR. GERRARD: Objection. Question is vague and

13:12:43 8 ambiguous as what he means by "closing statement."

13:12:46 9 MR. LEWIN: An escrow. A final settlement

13:12:49 10 statement.

13:12:50 11 ARBITRATOR WALL: A final settlement statement

13:12:52 12 for the deed in lieu?

13:12:55 13 MR. LEWIN: Right.

13:12:57 14 ARBITRATOR WALL: Okay. I'll overrule the

13:12:59 15 objection, but there's generally not.

13:13:07 16 MR. LEWIN: If you don't think it's not

13:13:09 17 probative --

13:13:10 18 ARBITRATOR WALL: There's not generally a closing

13:13:12 19 statement for a deed in lieu, but...

13:13:17 20 MR. LEWIN: I'll withdraw the question.

13:13:17 21 BY MR. LEWIN:

13:13:25 22 Q. Just so we can get off the operating agreement

13:13:30 23 right now, Mr. Gerrard asked you about Exhibit 67 and

13:13:38 24 having to do -- can we pull up Exhibit 67?

13:14:11 25 A. What about it?

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13:14:13 1 Q. I just want to draw your attention to the formula  
13:14:18 2 in the buy/sell agreement. Refer to this Email, and can  
13:14:27 3 you -- if you drafted it and what you mean by "I came up  
13:14:31 4 with." Did you come up with the formula all by yourself  
13:14:34 5 or did you have some help with that?

13:14:36 6 A. Some help.

13:14:38 7 Q. From whom?

13:14:40 8 A. From Mr. Bidsal.

13:14:42 9 Q. Have you ever heard Mr. Bidsal say that you and  
13:14:45 10 he massaged the language of the buy/sell agreement?

13:14:49 11 MR. SHAPIRO: Objection. He's asking if Ben ever  
13:14:53 12 heard Shawn say something?

13:14:55 13 ARBITRATOR WALL: Right.

13:14:56 14 MR. SHAPIRO: Okay. I guess it's not hearsay  
13:14:59 15 because Shawn's here.

13:15:01 16 ARBITRATOR WALL: And he's a party opponent.

13:15:04 17 MR. GERRARD: That only means if it's a statement  
13:15:07 18 against interests, so go ahead.

13:15:09 19 A. I heard him say that.

13:15:09 20 BY MR. LEWIN:

13:15:10 21 Q. Where did you hear him say that?

13:15:13 22 A. In the first arbitration.

13:15:15 23 Q. During the testimony?

13:15:16 24 A. During the testimony.

13:15:17 25 Q. In this very room?



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13:15:18 1 A. Yes.

13:15:22 2 ARBITRATOR WALL: It was in this room?

13:15:36 3 MR. LEWIN: In this room.

13:15:39 4 MR. GERRARD: Let's go off.

13:15:41 5 (Discussion off the record.)

13:15:41 6 BY MR. LEWIN:

13:15:43 7 Q. At the time Mr. Gerrard asked you that question,

13:15:47 8 he asked you if you wanted to give an explanation, and

13:15:49 9 he said you had to answer yes or no. Right?

13:15:52 10 A. That's right.

13:15:53 11 Q. So this is your explanation?

13:15:55 12 A. This is my explanation.

13:15:58 13 MR. GERRARD: Are you moving to admit 67?

13:16:01 14 Because it's not in evidence.

13:16:02 15 MR. LEWIN: No, I'm not.

13:16:04 16 MR. GERRARD: Okay.

13:16:04 17 BY MR. LEWIN:

13:16:09 18 Q. So I want to go to -- I'm going to skip -- well,

13:16:22 19 you heard Mr. Chain talk about having a couple of

13:16:25 20 properties listed? Mr. Chain testified about listing a

13:16:32 21 couple properties?

13:16:33 22 A. Looking?

13:16:36 23 Q. Listing.

13:16:36 24 A. Listing Green Valley, yes.

13:16:39 25 Q. Were you involved in the decision to list the

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13:16:42 1 properties for sale?

13:16:43 2 A. Yes.

13:16:43 3 Q. And for the price?

13:16:45 4 A. Yes.

13:16:46 5 Q. And the first sale was completed in 2012. Is

13:16:51 6 that correct?

13:16:52 7 A. The first.

13:16:55 8 Q. Sale?

13:16:56 9 A. Yes.

13:16:56 10 Q. And what building was that?

13:16:59 11 A. Building C.

13:17:00 12 Q. And we've already covered this, but just to set

13:17:09 13 this up: Were all the proceeds from the sale of

13:17:12 14 Building C used to purchase Greenway?

13:17:17 15 A. Not all. A little bit left.

13:17:21 16 Q. And that's what we call boot?

13:17:24 17 A. Boot, yes.

13:17:24 18 Q. And that boot was distributed?

13:17:27 19 A. It was distributed 70/30.

13:17:29 20 Q. And you're aware of that?

13:17:31 21 A. I became aware of it, yes.

13:17:34 22 Q. When did you become aware of that?

13:17:36 23 A. When they send me the calculations, I took a look

13:17:43 24 at it. I --

13:17:45 25 Q. And how did that -- so were those calculations --

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13:17:51 1 did they reflect your understanding of how the  
13:17:53 2 distributions were to be made?  
13:17:55 3 A. Well, actually, the distributions were to be made  
13:18:01 4 pro rata based on the capital contribution.  
13:18:07 5 Q. And distributed 70/30?  
13:18:09 6 A. No. At that time it was a little bit different.  
13:18:12 7 Mine was more because of the problem. A little bit  
13:18:15 8 different.  
13:18:16 9 Q. They were distributed 70/30?  
13:18:18 10 A. Yes, sir. Yes.  
13:18:19 11 Q. You were fine with that at the time. Right?  
13:18:21 12 A. At the time I was fine with it. I mean, it was  
13:18:25 13 there, but I mentioned it in 2010, yeah.  
13:18:30 14 Q. In terms of feeling comfortable with the way the  
13:18:41 15 distributions were going to be made in the future, did  
13:18:45 16 the fact that the boot was distributed 70/30 give you  
13:18:49 17 some reassurance?  
13:18:51 18 A. Yes. I looked at it and I thought it was okay.  
13:18:55 19 Q. When did you receive the 2012 tax return?  
13:19:00 20 A. I believe 2012 was sent late 2013.  
13:19:06 21 Q. Would you please turn to Exhibit 180?  
13:20:06 22 ARBITRATOR WALL: Does Spencer have it? Could he  
13:20:12 23 put it on the screen?  
13:20:15 24 MR. LEWIN: No. He doesn't have that one. I got  
13:20:20 25 it. No, I don't actually.

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13:20:28 1 MR. GARFINKEL: Want to share it with him?

13:20:32 2 MR. LEWIN: Yeah.

13:20:36 3 Is this the same as your No. 14?

13:20:40 4 MR. SHAPIRO: I don't remember.

13:20:40 5 BY MR. LEWIN:

13:20:42 6 Q. Exhibit 180. When you said you had to break

13:20:52 7 down --

13:20:52 8 MR. GERRARD: It is not the same as 14.

13:20:52 9 BY MR. LEWIN:

13:20:57 10 Q. Mr. Golshani, is Exhibit 180 the breakdown you

13:21:02 11 just referred to?

13:21:03 12 A. Yes.

13:21:04 13 MR. LEWIN: Move 180 into evidence, Your Honor.

13:21:07 14 MR. GERRARD: No objection.

13:21:08 15 ARBITRATOR WALL: 180 will be admitted.

13:21:08 16 (Exhibit 180 was admitted into evidence.)

13:21:08 17 BY MR. LEWIN:

13:21:12 18 Q. Now take a look at Exhibit 15.

13:21:25 19 A. 16, you said?

13:21:26 20 Q. 15. That is a -- Exhibit 15 is your 2012 tax

13:21:49 21 return?

13:21:49 22 A. Yes.

13:21:50 23 Q. Do you remember when you received this?

13:21:53 24 MR. GERRARD: Objection. Asked and answered. He

13:21:56 25 just answered that question.

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13:21:59 1 ARBITRATOR WALL: I'll allow it.

13:22:01 2 MR. GERRARD: Okay.

13:22:03 3 THE WITNESS: Answer.

13:22:04 4 A. Late 2013, I believe.

13:22:04 5 BY MR. LEWIN:

13:22:08 6 Q. Well, if you take a look -- I just want to get

13:22:11 7 the date down. If you take a look at page marked

13:22:21 8 2554 --

13:22:27 9 A. Okay.

13:22:27 10 Q. -- the date is September 10, 2013?

13:22:31 11 A. 2544?

13:22:38 12 Q. In the top right-hand corner.

13:22:43 13 MR. SHAPIRO: It's not there.

13:22:43 14 BY MR. LEWIN:

13:22:54 15 Q. 2554?

13:22:57 16 A. Oh. 9/10/2013 is 2554.

13:23:16 17 Q. We previously looked at your Exhibit 16 where

13:23:20 18 your K-1 was dated August 8, 2013. When you received

13:23:25 19 any K-1s and letters, were the tax returns ever

13:23:30 20 accompanying them?

13:23:32 21 A. I generally received tax return. I seldom got

13:23:38 22 K-1s however.

13:23:42 23 Q. Okay. Now, in terms of -- in terms of the

13:23:47 24 Greenway -- that was the property that the exchange was

13:23:51 25 done -- who located that property?

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13:23:53 1 A. I located the property.

13:23:55 2 Q. How did you locate it?

13:23:57 3 A. I was active in Auction.com on my own and was  
13:24:04 4 looking for properties in different cities. I found  
13:24:09 5 that.

13:24:12 6 Q. And did you bring it into the partnership?

13:24:16 7 A. Yeah. I put it in the contract under CLA  
13:24:20 8 property and we had sold -- I brought it to the Green  
13:24:29 9 Valley so we can do exchange for Building C.

13:24:32 10 Q. Did you ask for a premium?

13:24:35 11 A. No. I didn't ask for nothing.

13:24:37 12 Q. The checks that were referred to in the breakdown  
13:24:47 13 with respect to the sale for the boot, how did you  
13:24:52 14 receive those checks?

13:24:53 15 A. Generally, all the checks goes to my office and  
13:25:00 16 the accounting people get them and decide which belongs  
13:25:04 17 to what entity and register them and deposit them.

13:25:10 18 Q. Would it be -- when -- all of the entities went  
13:25:17 19 to the Noveltex office?

13:25:20 20 A. Yes.

13:25:21 21 Q. How many entities were receiving business  
13:25:24 22 documents there in 2012?

13:25:26 23 A. In 2012, probably three.

13:25:32 24 Q. Okay. And then after checks -- were the checks  
13:25:37 25 deposited before you saw -- did you ever get the checks

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13:25:41 1 or were they deposited before you saw them?

13:25:43 2 A. They deposit the check. Generally I am -- I had

13:25:47 3 so much to do, I was not in the office, and that's why

13:25:53 4 our policy was whatever check they get, they just

13:25:57 5 deposit. And no, I didn't see the checks.

13:26:01 6 Q. Mr. Bidsal said that before he ever issued

13:26:05 7 checks, he got your consent for any checks relating to

13:26:10 8 Green Valley. Is that true?

13:26:12 9 A. No.

13:26:12 10 Q. Did he ever seek your consent before he issued

13:26:18 11 any checks to you?

13:26:19 12 A. No.

13:26:19 13 Q. Or to himself?

13:26:20 14 A. No.

13:26:20 15 Q. So did you register any complaints about any

13:26:36 16 distribution to Mr. Bidsal in 2012?

13:26:40 17 A. No, I didn't.

13:26:42 18 Q. Let's turn to 2013. When did you get your 2013

13:26:52 19 tax return?

13:26:53 20 A. I got it in 2014.

13:26:57 21 Q. Take a look at Exhibit 19.

13:27:03 22 A. 19?

13:27:04 23 Q. Yes. And then also take a look at Exhibit 21.

13:27:30 24 A. 21. Okay.

13:27:35 25 Q. Just look at those both together.

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13:27:38 1 A. Okay.

13:27:39 2 Q. Exhibit 21 is a letter with a K-1. Right?

13:27:46 3 A. It is a K-1 for Green Valley.

13:27:55 4 Q. It's dated September 9, 2014?

13:27:57 5 A. That's right.

13:27:58 6 Q. And did the tax return accompany this letter?

13:28:03 7 A. I'm not sure if this was from the tax return, but

13:28:10 8 tax return contains the K-1.

13:28:13 9 Q. Okay. So was it -- and this is for the year 2013

13:28:21 10 tax return. Right?

13:28:22 11 A. Yes.

13:28:23 12 Q. Was there a building sold in 2014?

13:28:26 13 A. '14 or '13?

13:28:29 14 Q. '14?

13:28:30 15 A. Yes. A building was sold in 2014.

13:28:33 16 Q. And that was building what?

13:28:36 17 A. Building E.

13:28:44 18 MR. LEWIN: You know, perhaps -- it's almost

13:28:47 19 1:30, Your Honor.

13:28:51 20 Spencer, is anyone in the waiting room?

13:28:54 21 ARBITRATOR WALL: No. We would know.

13:28:56 22 MR. LEWIN: Oh, he wouldn't know. You would

13:28:59 23 know.

13:29:01 24 ARBITRATOR WALL: Yeah.

13:29:01 25 ///



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13:29:01 1 BY MR. LEWIN:

13:29:02 2 Q. Take a look at Exhibit 22.

13:29:05 3 A. Okay.

13:29:15 4 Q. And what is this?

13:29:42 5 A. This is a closing statement for Building E.

13:29:46 6 Q. And this is dated November 14, 2014?

13:29:53 7 A. November 14, 2014.

13:29:55 8 Q. Okay. Did you become concerned about

13:30:03 9 distributions -- strike that.

13:30:06 10 In 2014, did you become concerned about how

13:30:09 11 distributions were being made?

13:30:11 12 A. Yes.

13:30:12 13 Q. So previously you testified you started making

13:30:21 14 complaints in 2013. What complaints did you make in

13:30:25 15 2013?

13:30:25 16 A. In 2013?

13:30:29 17 Q. 2013.

13:30:30 18 A. 2013 I noticed -- actually, I didn't make

13:30:35 19 complaint, but in 2013 I noticed that my capital account

13:30:40 20 is going up and Mr. Bidsal's is going down. And it

13:30:47 21 wasn't much. 2000. And the year before it was about

13:30:52 22 the same. So I looked at the K-1s and I didn't have the

13:31:00 23 time to sit down and get the answer.

13:31:03 24 I called Mr. Bidsal and we were talking about

13:31:08 25 other things. I casually mentioned to him that, by the

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13:31:13 1 way, this number is different. What do you think? He  
13:31:16 2 said that, "I don't know. Should be okay, but I'll  
13:31:21 3 check." And then I pursue and forgot about it and he  
13:31:27 4 forgot about it too because it wasn't much. You know?  
13:31:32 5 So I just mentioned it to him. We had a very good  
13:31:36 6 relationship, and you know, I was sure this thing was  
13:31:40 7 going to be resolved. And there was other issues too  
13:31:46 8 and we resolved, so this to me wasn't --

13:31:52 9 **Q. By the way -- when you look at your tax return**  
13:31:58 10 **for 2013 that you received in 2014, September or later,**  
13:32:04 11 **did you look at it right away? Did you look at it upon**  
13:32:09 12 **receipt?**

13:32:10 13 A. No. No. As -- in those days I was extremely  
13:32:15 14 busy and I was running two, three different businesses  
13:32:21 15 and I was traveling a lot, and there were a lot of  
13:32:24 16 things I should learn, so I didn't have time to check  
13:32:28 17 things, and I was relying, on the case of Green Valley,  
13:32:37 18 100 percent on Mr. Bidsal to be very careful about this.  
13:32:43 19 So no, I didn't -- I wasn't waiting for them and I  
13:32:47 20 didn't check them right away.

13:32:49 21 **Q. Did you have an indication from anybody or any**  
13:32:53 22 **source that Mr. Bidsal was intentionally not following**  
13:33:00 23 **the distribution requirements of the operating**  
13:33:03 24 **agreement?**

13:33:04 25 A. At what time?

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13:33:05 1 Q. In 2013.

13:33:06 2 A. No.

13:33:07 3 Q. Okay. In 2014 you received a tax return that

13:33:10 4 shows -- a 2014 -- what did it show? You can locate the

13:33:18 5 K-1 if you want for 2014. Either way, what did it show

13:33:22 6 about the distributions in your capital account?

13:33:27 7 A. 2014 tax return?

13:33:36 8 Q. Yeah. You can look at 21. That's your K-1, if

13:33:44 9 it's easier.

13:33:44 10 A. Exhibit 21. That's 2013.

13:33:55 11 Q. Right. We were talking about the 2013 tax return

13:33:59 12 that you received in 2014.

13:34:02 13 ARBITRATOR WALL: You asked him about the 2014

13:34:04 14 tax return.

13:34:06 15 MR. LEWIN: I'm sorry. I thought I said look at

13:34:08 16 the tax return you received. My mistake.

13:34:08 17 BY MR. LEWIN:

13:34:11 18 Q. Look at the 2013 tax return that you received.

13:34:15 19 A. I have the K-1 here.

13:34:17 20 Q. What was the status of your K-1 account?

13:34:21 21 A. It is 71.95 percent, which is almost 72 percent.

13:34:30 22 Q. What is Mr. Bidsal's?

13:34:33 23 A. It doesn't have it here, but generally whenever

13:34:38 24 mine is over, his is under.

13:34:40 25 Q. At some point in time did you become aware of how

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13:34:42 1 the sales proceeds were distributed with respect to the

13:34:46 2 sale of Building E?

13:34:48 3 A. Yes.

13:34:50 4 Q. When was that?

13:34:51 5 A. It was --

13:34:55 6 ARBITRATOR WALL: When did he become aware or

13:34:57 7 when was the sale?

13:34:59 8 MR. LEWIN: When did he become aware.

13:35:00 9 A. I noticed it probably end of 2014 or '15.

13:35:00 10 BY MR. LEWIN:

13:35:09 11 Q. Did you -- did you begin -- did you contact

13:35:14 12 Mr. Bidsal in 2014 after September 9th to talk about the

13:35:20 13 fact that there was some problems with the way the funds

13:35:23 14 were being distributed?

13:35:25 15 A. Because of the sale?

13:35:27 16 Q. Or because of your K-1.

13:35:32 17 A. After 2014, yeah.

13:35:36 18 Q. I'm asking did you contact him in 2014?

13:35:40 19 A. In 2014, I don't remember.

13:35:41 20 Q. But at some time you did contact him?

13:35:44 21 A. Yes.

13:35:44 22 Q. When's the first time you recall contacting him?

13:35:47 23 A. I contact him when I got the tax return after a

13:35:54 24 couple of months, and then we had a discussion in the

13:35:57 25 office and they were bringing me the report and saying

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13:36:00 1 that we receive a check. It's 70/30 and things like  
13:36:05 2 that, which was in line with what we had. And then I  
13:36:09 3 took at look at it and I realized 70/30 is only the  
13:36:14 4 capital and he's not following the waterfall.  
13:36:18 5 So I started making calls serious and I said  
13:36:23 6 about end of 2015, what do you think -- what's the  
13:36:30 7 reason you're doing it this way?  
13:36:32 8 **Q. When do you first recall speaking to Mr. Bidsal**  
13:36:35 9 **about this issue about the sale of building --**  
13:36:38 10 **distributions from the sale of Building E?**  
13:36:42 11 A. It was about the end of 2015. In 2015.  
13:36:46 12 **Q. Why didn't you contact him before then?**  
13:36:54 13 A. Like I said, I didn't -- I was not aware that  
13:36:59 14 every year it is becoming like this, and I was not aware  
13:37:03 15 that it has become -- it is becoming more, and when  
13:37:07 16 there was a sale, big numbers started adding. So that's  
13:37:14 17 why. Like I said, we were in extremely good terms. I'm  
13:37:20 18 the one who put the down payment without any payment and  
13:37:23 19 I paid about 4 million dollars into our investment.  
13:37:29 20 MR. GERRARD: Objection. Move to strike.  
13:37:31 21 Nonresponsive.  
13:37:32 22 ARBITRATOR WALL: Hold on. There's an objection.  
13:37:35 23 MR. GERRARD: He answered the question. Now he's  
13:37:38 24 going off on something completely different.  
13:37:41 25 MR. LEWIN: The question was why didn't you call

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13:37:45 1 him earlier, and I think he's explaining.

13:37:48 2 MR. GERRARD: I don't think that was the

13:37:49 3 question.

13:37:49 4 BY MR. LEWIN:

13:37:50 5 Q. The bottom line is -- you've seen the first

13:37:54 6 communications that we've seen are in January 2016 that

13:38:00 7 refer to December 2015. Is that the first time it was

13:38:04 8 in writing?

13:38:04 9 A. I think so. Probably in 2015 I sent an Email.

13:38:11 10 Q. If you were concerned about the way monies were

13:38:15 11 being distributed, why didn't you ask him earlier?

13:38:18 12 A. Because of trust. I didn't scrutinize to see

13:38:22 13 what has happened. You know? Can I talk about what --

13:38:30 14 Q. You can tell kind of what your mindset was and

13:38:36 15 how and when you made complaints about distributions.

13:38:40 16 A. So what I'm trying to say, at those dates, there

13:38:44 17 was such a good relationship with Shawn, and I have so

13:38:49 18 much trust. As example, I was saying he had my money

13:38:54 19 without me having any paper with him. If something

13:38:58 20 happened to him, I cannot easily prove that that money

13:39:02 21 was mine. I trusted him. That trust continued and I

13:39:09 22 thought that could take care of it. I had a lot on my

13:39:13 23 plate, so I didn't scrutinize.

13:39:14 24 Q. When you did contact Mr. Bidsal, it was verbally.

13:39:22 25 Right?

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13:39:22 1 A. Yes.

13:39:23 2 **Q. For the first time?**

13:39:24 3 A. A couple of times.

13:39:29 4 **Q. How many times did you have in 2015 those**

13:39:33 5 **conversations?**

13:39:33 6 A. A couple of times.

13:39:34 7 **Q. Can you tell what was said in those**

13:39:37 8 **conversations?**

13:39:37 9 A. I asked him about why there is a disparity in the

13:39:42 10 capital ratio, and first he said didn't know, and then

13:39:50 11 he said he would look into it. And then later on he

13:39:54 12 direct me to Tina from the CPA office, which I called

13:40:07 13 and she answered. I told her the problem. He never

13:40:13 14 called me back when I called. He would not take my

13:40:16 15 call. It was like that.

13:40:20 16 **Q. When did you first raise the issue about the fact**

13:40:23 17 **he was only distributing the sale proceeds 70/30 with**

13:40:28 18 **respect to the basis of the funds?**

13:40:33 19 MR. GERRARD: Objection. Leading. He asked him

13:40:37 20 what did you talk about, and none of this was included

13:40:40 21 in that answer, so now he's telling him what he wants

13:40:43 22 the answer to be.

13:40:45 23 ARBITRATOR WALL: He asked when. When did you

13:40:48 24 talk about the fact it was 70/30, so...

13:40:54 25 MR. GERRARD: Right, but he's supplying the

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13:40:56 1 information that he wants it to be about when the

13:40:59 2 witness never testified about that.

13:41:02 3 ARBITRATOR WALL: He has to an extent. I'll

13:41:06 4 overrule that.

13:41:06 5 BY MR. LEWIN:

13:41:08 6 Q. When did you talk to Mr. Bidsal about the fact

13:41:10 7 that the distributions of the sale he was distributing

13:41:14 8 the costs on a 70/30 basis but the gains on a 50/50

13:41:20 9 basis?

13:41:20 10 A. It was end of 2015 and then in 2016.

13:41:27 11 MR. LEWIN: Your Honor, if I could have a moment.

13:41:30 12 I want to make sure that -- I want to make sure that

13:41:39 13 Spencer alerted the witnesses to the new...

13:41:43 14 ARBITRATOR WALL: Do you want to break and go off

13:41:45 15 the record?

13:41:47 16 MR. LEWIN: I'll send him a text.

13:42:40 17 Maybe we should take a couple-minute break. He

13:42:44 18 says he's done it.

13:42:48 19 ARBITRATOR WALL: Let's go off the record.

13:42:48 20 \*\*\*

13:42:48 21 (RECESS TAKEN FROM 1:42 P.M. TO 1:50 P.M.)

13:50:28 22 \*\*\*

13:50:28 23 ARBITRATOR WALL: We're going to take a break

13:50:31 24 from Mr. Golshani. Is that right?

13:50:35 25 MR. LEWIN: Yes.



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13:50:37	1	MR. GARFINKEL: Who do we have on here?	Page 1098
13:50:43	2	MR. LEWIN: The first one is Kasandra Schindler.	
13:50:55	3	ARBITRATOR WALL: Ms. Schindler, can you hear me?	
13:51:02	4	THE WITNESS: Yes.	
13:51:04	5	ARBITRATOR WALL: All right. Good afternoon.	
13:51:05	6	I'm David Wall. Can you raise your right hand, please.	
13:51:05	7	Whereupon,	
13:51:05	8	KASANDRA SCHINDLER,	
13:51:05	9	having first been called as a witness, was duly sworn	
13:51:21	10	and testified as follows:	
13:51:21	11	ARBITRATOR WALL: Mr. Lewin.	
13:51:21	12	EXAMINATION	
13:51:21	13	BY MR. LEWIN:	
13:51:24	14	<b>Q. Ms. Schindler, thank you very much for joining us</b>	
13:51:28	15	<b>this afternoon. Sorry to have kept you waiting. Would</b>	
13:51:31	16	<b>you please state your occupation?</b>	
13:51:35	17	ARBITRATOR WALL: Hold on. Let's do this. Is it	
13:51:40	18	Kasandra, K-A-S-A-N-D-R-A?	
13:51:42	19	THE WITNESS: Yes.	
13:51:43	20	ARBITRATOR WALL: Last name S-C-H-I-N-D-L-E-R?	
13:51:48	21	THE WITNESS: Yes.	
13:51:49	22	ARBITRATOR WALL: All right. Thank you.	
13:51:49	23	BY MR. LEWIN:	
13:51:51	24	<b>Q. Would you please state your occupation?</b>	
13:51:52	25	A. I'm a financial advisor with JPMorgan.	

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13:51:57 1 Q. Do you know Ben Golshani?

13:51:59 2 A. Yes.

13:52:00 3 Q. In what capacity do you know him?

13:52:02 4 A. It's hard to hear you. I'm going to put on my

13:52:07 5 ear pods and see if that helps.

13:52:11 6 ARBITRATOR WALL: Keep your voice up because this

13:52:14 7 is where the sound is coming from.

13:52:19 8 THE WITNESS: I'm going to see if I can hear you

13:52:21 9 a little bit better.

13:52:21 10 BY MR. LEWIN:

13:52:26 11 Q. So can you hear me better now?

13:52:28 12 A. Yes.

13:52:29 13 Q. Okay. Thank you.

13:52:31 14 In what capacity do you know Mr. Golshani?

13:52:34 15 A. As a client of the firm.

13:52:35 16 Q. And do you handle his account?

13:52:39 17 A. I do.

13:52:40 18 Q. And where do you work?

13:52:42 19 A. JPMorgan in Newport Beach.

13:52:48 20 Q. Is that a bank?

13:52:49 21 A. It is.

13:52:50 22 Q. And your title is what?

13:52:51 23 A. Financial advisor.

13:52:53 24 Q. And in connection with Mr. Golshani, I asked you

13:52:59 25 before today to look into his account so you could tell

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13:53:03 1 me some information about interest he earned during the  
13:53:07 2 years 2017, '18, and '19. Correct?  
13:53:11 3 A. Yes.  
13:53:12 4 Q. Did you do that?  
13:53:13 5 A. Yes.  
13:53:13 6 Q. First of all, can you tell me what the average --  
13:53:18 7 what kind of accounts does Mr. Golshani have at  
13:53:21 8 JPMorgan?  
13:53:22 9 MR. GERRARD: I'm going to object. This is a  
13:53:26 10 clear violation of the best evidence rule, and it's a  
13:53:30 11 clear violation as to the disclosure obligations under  
13:53:31 12 this arbitration. They have disclosed no documents, no  
13:53:36 13 bank statements of any kind from JPMorgan Chase, nothing  
13:53:40 14 that would allow this witness to be able to testify or  
13:53:43 15 authenticate it as a record or a business record.  
13:53:44 16 What they're trying to do is substitute her  
13:53:48 17 testimony for their failure to provide the actual  
13:53:51 18 documents that they were absolutely required to disclose  
13:53:53 19 if they were going to try to use it as evidence. It's  
13:53:53 20 inappropriate for them to try to use this witness to  
13:53:55 21 bypass their obligation to produce the actual documents  
13:53:58 22 that we have no ability to even cross-examine on or  
13:54:02 23 question during depositions because it simply was never  
13:54:05 24 disclosed.  
13:54:06 25 So we brought this up once before in motions in

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13:54:12 1 limine when they were claiming that they wanted to use  
13:54:15 2 this witness. We made it very clear we were going to  
13:54:18 3 object at the trial. Your Honor said that you were  
13:54:21 4 going to wait until trial to decide the issue.

13:54:27 5 To sum up one more time: They've not disclosed  
13:54:30 6 any documents from JPMorgan Chase. None. They did not  
13:54:34 7 disclose this witness at the beginning of the case  
13:54:36 8 either. So basically what we have is them trying to put  
13:54:40 9 on testimony with no documents, even though she  
13:54:43 10 absolutely had to review documents in order to arrive at  
13:54:43 11 the testimony she's about to give you. That's a  
13:54:51 12 violation of the best evidence rule.

13:54:51 13 MR. LEWIN: I think she can testify as to what  
13:54:53 14 kind of accounts he has and during that time, what --  
13:54:55 15 the applicable interest rate that he was receiving as an  
13:54:58 16 average, which is what I asked her to testify about.

13:55:02 17 ARBITRATOR WALL: What about the records that she  
13:55:04 18 relied on?

13:55:05 19 MR. LEWIN: Well, I don't think that the records  
13:55:08 20 have to be made as an exhibit for her to give her  
13:55:11 21 testimony.

13:55:14 22 ARBITRATOR WALL: She can just --

13:55:15 23 MR. LEWIN: Mr. Golshani can testify about what  
13:55:18 24 interest he received. I was trying to do it through a  
13:55:21 25 third-party witness.

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13:55:23 1 MR. GERRARD: It's going to be the same objection Page 1102  
13:55:25 2 even if Mr. Golshani tries to testify about it because  
13:55:28 3 they had their opportunity to produce the records. They  
13:55:31 4 did not produce the records. This witness does not have  
13:55:34 5 independent knowledge of what his account balances are  
13:55:37 6 without reviewing the records. She just testified that  
13:55:41 7 she looked at the records to be able to arrive at the  
13:55:43 8 information she's about to give us, and those records  
13:55:46 9 themselves constitute hearsay. Her testimony  
13:55:50 10 constitutes hearsay. The only way to get around that  
13:55:54 11 hearsay would for them to claim it's a business record.  
13:55:57 12 But if it is, then we're entitled to the record. That's  
13:55:57 13 the purpose of the business -- sorry -- of the best  
13:56:03 14 evidence rule.

13:56:03 15 ARBITRATOR WALL: So February 25th was the date  
13:56:08 16 that claimants filed a motion in limine to exclude late  
13:56:12 17 and improperly disclosed witnesses and improperly  
13:56:16 18 disclosed documents. There was an opposition filed on  
13:56:21 19 March 3rd, and one of the issues was with respect to  
13:56:31 20 Ms. Schindler. And I noted in the order from  
13:56:35 21 approximately March 4th or 5th of 2021 -- I basically  
13:56:39 22 said the following, and I will read from the order.

13:56:42 23 "Ms. Schindler from JPMorgan Chase Bank was  
13:56:47 24 designated in Respondents' third supplement on  
13:56:47 25 February 16th, 2021 to testify, quote, about funds on

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13:56:52 1 hand controlled by Ben Golshani and available to  
13:56:55 2 complete the purchase of the Bidsal membership interest  
13:56:58 3 as well as interest earned thereon, as well as bank  
13:57:02 4 records as necessary."

13:57:06 5 That came from the third supplemental  
13:57:10 6 disclosures.

13:57:10 7 The order goes on to say, "Claimant argues that  
13:57:14 8 no records from Chase Bank have been disclosed in this  
13:57:18 9 case such that Schindler would be qualified to  
13:57:21 10 authenticate bank records in a position with Chase Bank.  
13:57:23 11 Claimant also notes that she may be Mr. Golshani's  
13:57:26 12 personal banker and therefore would have become known to  
13:57:31 13 Respondent long before she was disclosed as a witness.  
13:57:33 14 In response, Respondent does not address those issues,  
13:57:36 15 saying only that Schindler is, quote, offered to testify  
13:57:39 16 about funds on hand and available to Ben Golshani (and  
13:57:44 17 thus CLA) and the interest rate earned on those funds."

13:57:54 18 The order goes on to say, "Given the fact that  
13:57:57 19 Ms. Schindler was identified with contact information  
13:58:00 20 prior to the close of discovery, it is the determination  
13:58:04 21 of the arbitrator that the motion in limine to exclude  
13:58:08 22 her as a witness is hereby denied without prejudice,  
13:58:11 23 reserving to Claimant the right to object to the nature  
13:58:13 24 of her testimony (attempting to authenticate records not  
13:58:19 25 previously disclosed, lack of relevance in

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13:58:23 1 Mr. Golshani's personal holdings, etc.) if she's

13:58:25 2 presented as a witness."

13:58:27 3 Okay. So where we are is you intend to have her

13:58:31 4 testify about holdings or accounts of Mr. Golshani and

13:58:40 5 interest earned thereon?

13:58:42 6 MR. LEWIN: That's correct.

13:58:44 7 ARBITRATOR WALL: Okay. Without having ever

13:58:46 8 disclosed those records?

13:58:49 9 MR. LEWIN: Correct.

13:58:50 10 ARBITRATOR WALL: Well, that would violate a

13:58:52 11 number of evidentiary rules, in addition to disclosure

13:58:57 12 requirements. So I'm sustaining the objection to the

13:59:05 13 last question. I don't know what else you intend to get

13:59:08 14 from her.

13:59:10 15 MR. LEWIN: Okay.

13:59:10 16 BY MR. LEWIN:

13:59:11 17 **Q. Let me try -- during the year 2018, what was the**

13:59:18 18 **highest interest rate that was available for savings**

13:59:23 19 **accounts at JPMorgan Bank?**

13:59:29 20 MR. GERRARD: Same objection, Your Honor.

13:59:32 21 ARBITRATOR WALL: We don't care about that one.

13:59:34 22 You may answer. Ms. Schindler, when there's an

13:59:37 23 objection you're doing the right thing and waiting until

13:59:40 24 I jump in. So you may answer that question.

13:59:44 25 A. 2 and a quarter percent.

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13:59:44 1 BY MR. LEWIN: Page 1105

13:59:48 2 Q. How about for 2019? Same question.

13:59:50 3 A. 2.71.

13:59:50 4 Q. What about for 2019?

13:59:54 5 A. 2019 --

13:59:55 6 ARBITRATOR WALL: Ms. Schindler, let me ask: Are

13:59:56 7 you referring to a document?

13:59:59 8 THE WITNESS: Yes.

14:00:00 9 ARBITRATOR WALL: What's the document?

14:00:04 10 THE WITNESS: Year-end statement.

14:00:08 11 ARBITRATOR WALL: Year-end statement of what?

14:00:11 12 THE WITNESS: Of Mr. Golshani.

14:00:16 13 MR. GERRARD: Again, Your Honor, I'd move to

14:00:18 14 strike the testimony.

14:00:19 15 ARBITRATOR WALL: The motion to strike is

14:00:21 16 granted.

14:00:21 17 BY MR. LEWIN:

14:00:21 18 Q. Are you able to testify about the available

14:00:24 19 interest rates in 2017, '18, and 19?

14:00:27 20 ARBITRATOR WALL: For who?

14:00:29 21 MR. LEWIN: For the bank, without looking --

14:00:30 22 without reference to Mr. Golshani's accounts.

14:00:31 23 ARBITRATOR WALL: Wouldn't be relevant.

14:00:35 24 MR. LEWIN: All right.

14:00:35 25 Ms. Schindler, I don't think we have anything



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14:00:37 1 further then. Thank you for coming. Page 1106

14:00:39 2 ARBITRATOR WALL: Thank you very much.

14:00:42 3 THE WITNESS: Thank you.

14:00:44 4 MR. LEWIN: Do we have Mr. LeGrand?

14:00:48 5 MR. GERRARD: Not yet.

14:00:53 6 MR. LEWIN: He told me he was in the waiting

14:00:55 7 room.

14:00:56 8 ARBITRATOR WALL: No. She popped up in the

14:00:58 9 waiting room.

14:01:00 10 MR. LEWIN: I'm going to call him.

14:01:05 11 THE WITNESS: We'll go off the record.

14:01:07 12 (Discussion off the record.)

14:03:16 13 ARBITRATOR WALL: Mr. LeGrand, can you hear me?

14:03:21 14 THE WITNESS: Yes, I can.

14:03:21 15 Whereupon,

14:03:21 16 DAVID LEGRAND, ESQ.,

14:03:21 17 having first been called as a witness, was duly sworn

14:03:32 18 and testified as follows:

14:03:32 19 MR. GERRARD: Your Honor, before we proceed, I

14:03:34 20 have to raise an objection about Mr. LeGrand testifying

14:03:37 21 at all, and I think voir dire is going to be

14:03:41 22 appropriate. Mr. LeGrand has not only attorney/client

14:03:45 23 privilege obligations to the entity Green Valley

14:03:52 24 Commerce, but also has ethical responsibilities under

14:03:56 25 our Rules of Professional Conduct 1.4, 1.7, and 1.13.

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14:04:04	1	ARBITRATOR WALL: Nevada code?	Page 1107
14:04:05	2	MR. GERRARD: Yes. Nevada Rules of Professional	
14:04:08	3	Conduct. I don't know how he would possibly testify in	
14:04:12	4	a proceeding and take a position adverse to that of his	
14:04:17	5	client. It's obvious he's had communications with	
14:04:20	6	Mr. Golshani and Mr. Lewin without ever notifying his	
14:04:25	7	client of those communications. There are serious	
14:04:28	8	issues that are raised by his willingness to appear,	
14:04:32	9	which will likely have to result in a Bar complaint. I	
14:04:37	10	want to do voir dire before any questions are asked him	
14:04:41	11	so I can determine what the extent of the	
14:04:43	12	confidentiality problems are and the attorney/client	
14:04:48	13	privilege breaches.	
14:04:49	14	MR. LEWIN: Your Honor, these objections are a	
14:04:54	15	thinly veiled attempt to intimidate the witness. If he	
14:05:00	16	was going to bring up these objections, he should have	
14:05:03	17	done so before. He's saying he's violating ethical	
14:05:09	18	obligations and a Bar complaint. He testified without	
14:05:12	19	objection in the first arbitration.	
14:05:15	20	ARBITRATOR WALL: I don't see that as a waiver.	
14:05:17	21	MR. LEWIN: The bottom line is that he did work	
14:05:21	22	for Green Valley.	
14:05:23	23	MR. GERRARD: I don't want to hear Mr. Lewin's --	
14:05:26	24	ARBITRATOR WALL: It's not an offer of proof	
14:05:28	25	right now, so...	

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14:05:34 1 MR. LEWIN: I think it's inappropriate for Mr.  
14:05:38 2 Gerrard to basically threaten him with a Bar complaint  
14:05:42 3 if he testifies.  
14:05:44 4 MR. GERRARD: It's not a threat. It's my  
14:05:46 5 obligation to let Mr. LeGrand know of my concerns. It's  
14:05:51 6 not a threat. It's exactly what we anticipate is a  
14:05:54 7 problem. I need to conduct voir dire so I can see the  
14:05:58 8 extent of that before any questions are asked so  
14:06:02 9 Mr. LeGrand is fully advised of the position that we  
14:06:06 10 have as it relates to this.  
14:06:06 11 ARBITRATOR WALL: I mean, any time an attorney  
14:06:07 12 testifies regarding client communications, there's  
14:06:11 13 generally a waiver somewhere along the line or an  
14:06:14 14 exception to the Rules of Professional Conduct that  
14:06:18 15 apply somehow.  
14:06:23 16 MR. GARFINKEL: Your Honor, may I speak? Mr.  
14:06:26 17 LeGrand's deposition was taken in the litigation.  
14:06:29 18 MR. SHAPIRO: No.  
14:06:30 19 MR. GARFINKEL: Yes.  
14:06:32 20 MR. SHAPIRO: No. No.  
14:06:34 21 MR. GARFINKEL: I'm talking.  
14:06:35 22 ARBITRATOR WALL: Stop. Stop. This litigation  
14:06:36 23 was me. In the litigation was he deposed?  
14:06:42 24 MR. GARFINKEL: No, he was not.  
14:06:43 25 ARBITRATOR WALL: Okay. That's what they were

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14:06:44 1 trying to say.

14:06:45 2 MR. GARFINKEL: Mission Square is pending in

14:06:47 3 state court, and also the first arbitration --

14:06:50 4 ARBITRATOR WALL: I don't care about the

14:06:51 5 Mission --

14:06:52 6 MR. GARFINKEL: He also testified at the first

14:06:54 7 arbitration. He was the drafter of the Green Valley

14:06:58 8 operating agreement. It says that in there.

14:07:01 9 ARBITRATOR WALL: I understand.

14:07:02 10 MR. GARFINKEL: I guess they could go ahead -- I

14:07:05 11 understand why Mr. Lewin is making those objections,

14:07:08 12 because I think he's right. All of a sudden, after

14:07:11 13 years, now they're objecting?

14:07:15 14 ARBITRATOR WALL: What I was saying is I don't

14:07:18 15 consider litigation for Mission Square to be a waiver in

14:07:22 16 this action. I don't consider his testimony before

14:07:26 17 Judge Haberfeld to necessarily be a waiver. The issues

14:07:32 18 are somewhat different. So with respect to the -- you

14:07:37 19 know, what is at issue, which is sort of how the Nevada

14:07:41 20 Supreme Court look at attorney/client waivers for

14:07:44 21 purposes of testifying, they're ostensibly and

14:07:50 22 potentially different. I haven't read his testimony

14:07:54 23 previously to know whether the issue of a waiver was

14:07:56 24 explored or not.

14:07:58 25 MR. GARFINKEL: Never was.

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14:07:59 1 MR. LEWIN: Your Honor, with respect to the

14:08:01 2 waiver --

14:08:03 3 ARBITRATOR WALL: There's two waivers going on.

14:08:06 4 I was saying "waiver" in terms of waiving

14:08:09 5 attorney/client privilege to allow him to testify to

14:08:12 6 communications; and secondarily, the waiver and estoppel

14:08:15 7 kind of thing by having him say if he's testified

14:08:18 8 before, then there's a waiver on the issue of whether he

14:08:24 9 can testify.

14:08:26 10 MR. LEWIN: There's actually two matters. First

14:08:29 11 of all, he testified -- his deposition was taken in both

14:08:33 12 the Mission Square case and the arbitration. The

14:08:37 13 testimony itself, once there's a waiver of an

14:08:40 14 attorney/client privilege -- if there was one, by the

14:08:43 15 way, and I'm not agreeing there was one to waiver --

14:08:46 16 it's gone.

14:08:47 17 ARBITRATOR WALL: Not for all purposes, no. I

14:08:50 18 disagree.

14:08:52 19 MR. LEWIN: If he testifies about the drafting of

14:08:54 20 the operating agreement or communications that he's had

14:08:59 21 regarding that and has produced documents concerning

14:09:03 22 this which were produced both in a deposition in -- Mr.

14:09:09 23 Shapiro took his deposition.

14:09:12 24 MR. SHAPIRO: No.

14:09:13 25 MR. LEWIN: You were present during his

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14:09:15 1 deposition.

14:09:16 2 MR. SHAPIRO: I was present but didn't Notice it.

14:09:19 3 MR. GARFINKEL: They got all the documents --

14:09:22 4 ARBITRATOR WALL: One at a time for her.

14:09:24 5 MR. LEWIN: That horse is out of the barn, I

14:09:26 6 submit. So it doesn't -- I don't think you can waiver

14:09:29 7 the attorney/client privilege here and assert it here on

14:09:33 8 the same subject matter.

14:09:34 9 ARBITRATOR WALL: I don't know it's the same

14:09:36 10 subject matter. If the same subject matter is the Green

14:09:41 11 Valley transaction, that's a little narrower than

14:09:44 12 discussions with respect to different provisions which

14:09:47 13 may or may not have been an issue in his prior

14:09:49 14 testimony. I haven't seen his prior testimony.

14:09:53 15 MR. LEWIN: Understand that he was -- and I think

14:09:56 16 he'll testify he considered his client to be --

14:10:01 17 MR. GERRARD: I don't want to hear Mr. Lewin

14:10:03 18 speaking for Mr. --

14:10:05 19 MR. LEWIN: After you threaten him and you

14:10:08 20 complain about me telling him?

14:10:11 21 ARBITRATOR WALL: Do I get to speak or do you

14:10:15 22 want to take control? Do you want to sit here?

14:10:19 23 MR. LEWIN: I apologize, Your Honor.

14:10:48 24 ARBITRATOR WALL: Mr. LeGrand, can you hear me?

14:10:51 25 I'm going to mute my own microphone for a moment. All

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14:10:55	1	right?	Page 1112
14:10:57	2	THE WITNESS: Very good.	
14:10:59	3	ARBITRATOR WALL: Go ahead.	
14:11:01	4	MR. LEWIN: I apologize, Your Honor, if I	
14:11:05	5	overstepped before, but the bottom line is that	
14:11:08	6	Mr. LeGrand testified, as they well know. They have his	
14:11:13	7	deposition that he represented Green Valley Commerce.	
14:11:16	8	He had meetings. He had meetings with Mr. Bidsal on	
14:11:20	9	behalf of Green Valley Commerce that he billed Green	
14:11:25	10	Valley Commerce. He had meetings with both Ben and	
14:11:28	11	Shawn regarding the operating agreement, and there's	
14:11:30	12	written communications. And to the extent that his	
14:11:34	13	testimony about what he reviewed with both of them --	
14:11:38	14	understand they are both managers. They both -- both of	
14:11:42	15	them or either of them can waiver the privilege.	
14:11:47	16	MR. GERRARD: No. No.	
14:11:49	17	ARBITRATOR WALL: I don't think Mr. Golshani	
14:11:51	18	could waive the privilege with respect to discussions	
14:11:54	19	that the lawyer had with Mr. Bidsal.	
14:11:56	20	MR. LEWIN: It depends what capacity Mr. Bidsal	
14:12:00	21	is here for. Remember Mr. LeGrand is going to say the	
14:12:04	22	client was Green Valley, and that's been billed and that	
14:12:09	23	is what he considered the client. That's what he said	
14:12:12	24	in his deposition and at the first arbitration.	
14:12:20	25	ARBITRATOR WALL: Mr. Gerrard.	

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14:12:21 1 MR. GERRARD: Sure. It's very straightforward,  
14:12:24 2 Judge. NRCP 1.13. That's the rule that deals with an  
14:12:32 3 organization as a client. It clearly states that if a  
14:12:35 4 lawyer represents an entity as a client, that that is  
14:12:39 5 the client. And then Subpart G of that rule states that  
14:12:43 6 if the lawyer representing that organization also wants  
14:12:48 7 to represent any of its officers, directors, employees  
14:12:53 8 or members -- that word is used, members -- that the  
14:12:56 9 organization's consent to that dual representation is  
14:12:59 10 required by Rule 1.7.

14:13:01 11 ARBITRATOR WALL: Okay.

14:13:03 12 MR. GERRARD: That has never occurred here, and  
14:13:05 13 Mr. LeGrand has been acting on behalf of one of the  
14:13:10 14 members of this entity adversely to not only the client,  
14:13:14 15 because he's about to give testimony or they're going to  
14:13:17 16 try to elicit testimony that's inconsistent with what  
14:13:20 17 his client, the company, did. In other words, the  
14:13:23 18 company took a certain position. They filed tax  
14:13:26 19 returns. They took all the actions that they did that  
14:13:29 20 you've already heard testimony about based upon their  
14:13:32 21 understanding of the operating agreement, and now  
14:13:35 22 they're trying to bring in Mr. LeGrand after the fact to  
14:13:39 23 take a position that's inconsistent with the one taken  
14:13:42 24 by the entity, which is his client, and under Rule 1.7,  
14:13:46 25 they cannot do that.



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14:13:47 1 Mr. LeGrand cannot take a position inconsistent Page 1114  
14:13:51 2 with that of his client, nor can he be prepping or  
14:13:56 3 speaking with one of the members to the exclusion of the  
14:13:59 4 other member without the other member's consent. That's  
14:14:03 5 very clear under Rule 1.7. Rule 1.7 deals with the  
14:14:08 6 conflict of interest that arises when there's a  
14:14:12 7 concurrent conflict of interest. And a concurrent  
14:14:15 8 conflict of interest is defined as the representation of  
14:14:22 9 one client that will be directly adverse to another  
14:14:25 10 client.  
14:14:26 11 And here he's been representing Mr. Golshani  
14:14:30 12 individually and speaking with Mr. Golshani and his  
14:14:34 13 lawyers individually without to consent of the  
14:14:37 14 company -- because that consent would have to come from  
14:14:40 15 both managers, not just one -- and he's been divulging,  
14:14:44 16 apparently, attorney/client privilege communications.  
14:14:48 17 Because as long as he is just speaking with  
14:14:51 18 Mr. Golshani, he's okay. The minute they try to bring  
14:14:54 19 that to Your Honor, it's a breach of the attorney/client  
14:14:58 20 privilege.  
14:14:58 21 So the problem is he has an irreconcilable  
14:15:03 22 conflict of interest. He did not get the consent of the  
14:15:07 23 entity to be able to speak with Mr. Golshani  
14:15:09 24 individually, to discuss this case with just  
14:15:12 25 Mr. Golshani and his lawyers without notifying

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14:15:15 1 Mr. Bidsal of what it was that was the issue, No. 1.

14:15:19 2 No. 2, he does not have the right to take any

14:15:22 3 position that's inconsistent with his client, which is

14:15:25 4 the company, which is exactly what they're trying to put

14:15:28 5 him on for.

14:15:29 6 No. 3, he's never obtained any waiver of a

14:15:32 7 conflict or obtained the consent of either the client or

14:15:36 8 Mr. Bidsal. Both of those -- all three of those are

14:15:39 9 violations of 1.7. Now as to the attorney/client

14:15:43 10 privilege issue specifically, that's, of course, dealt

14:15:46 11 with in NRS Chapter 49. NRS Chapter 49.115 states in

14:15:53 12 the exceptions -- these are the exceptions to the

14:15:56 13 attorney/client privilege. And if you could bring that

14:16:02 14 up, Your Honor, that would probably be easier for you to

14:16:05 15 see it. I'm specifically looking at exception No. 5.

14:16:10 16 MR. LEWIN: What are you looking at?

14:16:13 17 MR. GERRARD: NRS 49.115. No. 5 is the one at

14:16:17 18 issue. There is no privilege as to a communication

14:16:23 19 relevant to a matter of common interest between two or

14:16:27 20 more clients if the communication was made by any of

14:16:30 21 them to a lawyer retained or a consultant in common when

14:16:35 22 offered in an action between any of them.

14:16:40 23 MR. SHAPIRO: Any of the clients.

14:16:42 24 MR. GERRARD: I'm sorry. Right. So again --

14:16:47 25 MR. GARFINKEL: Green Valley is not a party.

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14:16:51 1 MR. GERRARD: Yeah. Here we have an  
14:16:55 2 irreconcilable conflict of interest, and there's no way  
14:16:58 3 they can get around the attorney/client privilege  
14:17:02 4 because this is a communication which is a matter of  
14:17:05 5 common interest between two or more clients.

14:17:10 6 MR. SHAPIRO: No. The client was Green Valley.  
14:17:13 7 He was very clear in his testimony. Green Valley is not  
14:17:16 8 a party.

14:17:18 9 MR. GERRARD: Exactly. So the exception does not  
14:17:19 10 apply, and he has never gotten the consent of the  
14:17:22 11 entity. So, Judge, this is the problem that we have  
14:17:25 12 with Mr. LeGrand. Somewhere along the line he thought  
14:17:29 13 it was appropriate for him to start having  
14:17:32 14 communications with Mr. Golshani and Mr. Golshani's  
14:17:35 15 lawyers and apparently discussing communications he had  
14:17:38 16 with Mr. Bidsal, which he does not have the right to do.  
14:17:41 17 They're privileged. Mr. Bidsal has never waived any  
14:17:46 18 privilege, and the client could not waive the privilege  
14:17:49 19 because it would require the consent of both of the  
14:17:52 20 parties that are managers. And so -- that has not  
14:17:57 21 happened. That's very clear, so I have very grave  
14:18:00 22 concerns about this witness providing testimony with the  
14:18:03 23 irreconcilable conflict of interest that exists.

14:18:08 24 ARBITRATOR WALL: Why wouldn't this have been  
14:18:12 25 raised as soon as Mr. LeGrand was Noticed as a witness?

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14:18:16 1 MR. GERRARD: We didn't raise it because he Page 1117  
14:18:20 2 hadn't done anything to violate it. Unless or until  
14:18:24 3 Mr. LeGrand decides he's going to appear, he's the one  
14:18:28 4 that needed to object to the Subpoena. He has an  
14:18:33 5 absolute obligation, a fiduciary duty to my client and  
14:18:37 6 the entity to preserve that privilege and not violate  
14:18:41 7 his ethical responsibilities, and we had to wait to see  
14:18:43 8 if he was actually going to decide to appear. Not only  
14:18:47 9 is he appearing, he's obviously had communications.  
14:18:52 10 MR. SHAPIRO: Not only that, the issues in the  
14:18:55 11 prior arbitration didn't have the same inherit conflict.  
14:19:00 12 When the arbitration was first filed, the extent and  
14:19:03 13 scope of this arbitration was a little unknown. It gets  
14:19:05 14 narrowed down as the process goes by. And as it has  
14:19:05 15 been narrowed down, most of those issues that he could  
14:19:12 16 testify to are eliminated. It's irrelevant. The only  
14:19:14 17 remaining issues he can testify to involve an inherit  
14:19:18 18 conflict that didn't exist in any of the prior existing  
14:19:23 19 proceedings.  
14:19:24 20 ARBITRATOR WALL: Why not?  
14:19:25 21 MR. SHAPIRO: The issue was who was the drafter  
14:19:28 22 of specific language. That's not privileged. There was  
14:19:33 23 discussion about where that language came from. That  
14:19:37 24 was it. There wasn't discussion about what it meant.  
14:19:40 25 That wasn't what David LeGrand's testimony was used for.

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14:19:44 1 Obviously the intent of the parties, that's what the  
14:19:46 2 Court is supposed to interpret. It didn't get into any  
14:19:49 3 issues that were privileged.

14:19:52 4 In this case he's going to try and come in and  
14:19:54 5 take a position that's contrary to his client and  
14:19:57 6 contrary to the actions of Green Valley Commerce over  
14:20:02 7 the years, and that's where the conflict comes in.

14:20:05 8 ARBITRATOR WALL: Mr. Lewin.

14:20:06 9 MR. LEWIN: First of all, there's no conflict  
14:20:09 10 that exists to the extent he represented Green Valley.  
14:20:13 11 He worked with both Mr. Bidsal and Mr. Golshani in  
14:20:18 12 creating the operating agreement. They've listed as  
14:20:21 13 exhibits in their own exhibit list all kinds of  
14:20:24 14 communications between him and Mr. LeGrand and Mr.  
14:20:28 15 Bidsal and Mr. Golshani.

14:20:30 16 ARBITRATOR WALL: For me that doesn't waive the  
14:20:33 17 attorney/client privilege for any other conversations  
14:20:36 18 they had.

14:20:37 19 MR. LEWIN: The claim here is in essence that  
14:20:41 20 Mr. Bidsal is his client and he's going to testify --

14:20:45 21 ARBITRATOR WALL: No. Green Valley Commerce, LLC  
14:20:47 22 is the client, and he can't testify without the consent  
14:20:55 23 of Green Valley Commerce to protected communications by  
14:21:01 24 the managers, and the consent is not unilaterally  
14:21:11 25 Mr. Golshani's to waive consent.

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14:21:16 1 MR. GARFINKEL: The first litigation -- I Page 1119  
14:21:18 2 disagree with Mr. Shapiro. The first litigation  
14:21:22 3 ultimately involved -- the first arbitration involved  
14:21:25 4 what the Green Valley operating agreement said and what  
14:21:28 5 it meant, and that's what Judge Haberfeld did. He had  
14:21:33 6 to interpret the operating agreement.  
14:21:37 7 Similarly, you have to interpret the operating  
14:21:39 8 agreement in this case. What you're dealing with now is  
14:21:42 9 Exhibit B. It's no different from the first one.  
14:21:45 10 Mr. LeGrand testified about the drafting process and  
14:21:49 11 what the intent was because he communicated with  
14:21:52 12 Mr. Golshani and Mr. Bidsal, and that's what the first  
14:21:55 13 arbitration was about. That's what Judge Haberfeld had  
14:22:00 14 to do. He had to interpret the contract. He said it  
14:22:04 15 was ambiguous.  
14:22:05 16 The bottom line is he listened to the testimony  
14:22:07 17 of Mr. LeGrand and that's how he ruled. It's no  
14:22:11 18 different here. What's funny is they identified  
14:22:13 19 Mr. LeGrand as a witness. So did we. They knew he was  
14:22:17 20 going to be testifying. They've put into all kinds of  
14:22:21 21 Emails that deal with the drafting process. They're  
14:22:26 22 trying to be creative and keep him from testifying, but  
14:22:29 23 it's no different from the first arbitration. He was  
14:22:33 24 brought in to testify about what the intent was of the  
14:22:35 25 parties in the drafting of the agreement. It's no

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14:22:44 1 different.

14:22:44 2 MR. SHAPIRO: He never testified --

14:22:46 3 ARBITRATOR WALL: Wait, wait, wait, wait, wait.

14:22:47 4 One at a time.

14:22:48 5 MR. LEWIN: The documents we intend to question

14:22:50 6 him about are documents produced by him in the first

14:22:53 7 litigation.

14:22:54 8 ARBITRATOR WALL: "Him" being?

14:22:56 9 MR. LEWIN: Mr. LeGrand. Mr. Shapiro knows about

14:23:01 10 it. They're documents we disclosed. Documents on our

14:23:04 11 witness list. And who is to say that one manager can

14:23:10 12 assert privilege for Green Valley but the other one

14:23:14 13 can't waive it? Do they need consensus to assert the

14:23:17 14 privilege? Again, his testimony is not against Green

14:23:22 15 Valley. Green Valley is not a party here. His

14:23:26 16 testimony and the idea of whatever Mr. Bidsal does is

14:23:30 17 somehow convoluted into the action of the LLC -- if he

14:23:35 18 does something as a manager that is not in accordance

14:23:39 19 with the operating agreement, that's not contrary to

14:23:42 20 Green Valley. The action is against him to try to

14:23:45 21 address improper distributions that he's made and try to

14:23:51 22 come to the purchase price. He is the drafter of the

14:23:54 23 agreement. He had meetings with both of them. He had

14:23:57 24 discussions with both of them. I don't think there's an

14:24:00 25 issue of privilege here. If there was, it certainly was

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14:24:04 1 waived when he produced the documents we intend to ask  
14:24:07 2 him about.  
14:24:08 3 ARBITRATOR WALL: I don't know that that  
14:24:09 4 constitutes a waiver.  
14:24:10 5 MR. GERRARD: It's really straightforward. When  
14:24:13 6 you read the rule, he must get the consent of the client  
14:24:19 7 to waive the conflict. He hasn't done that. He could  
14:24:23 8 never do it because one manager acting alone can't do  
14:24:27 9 it. In fact, if you're asking for a waiver, the waiver  
14:24:32 10 can't be given by the party that intends to use the  
14:24:36 11 information against the other party. That's what the  
14:24:38 12 rule says.  
14:24:39 13 So there's just no way that he could have ever  
14:24:42 14 obtained the waiver of the conflict of interest. It  
14:24:46 15 just can't happen. And his conflict doesn't go away.  
14:24:49 16 It's irreconcilable because what he's done, he had  
14:24:54 17 communications clearly with representatives of the  
14:24:57 18 client. Those communications are privileged. They  
14:25:00 19 can't go to a third party. What they're saying is, in  
14:25:05 20 essence, because he was involved in communications that  
14:25:07 21 both Mr. Bidsal and Mr. Golshani were there for, that  
14:25:11 22 that somehow waives the privilege. Of course it  
14:25:14 23 doesn't. It's as soon as that information is tried to  
14:25:18 24 be communicated to a third party like Your Honor that  
14:25:21 25 the privilege must be invoked.



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14:25:24 1 So that's the problem. The rules are very clear, Page 1122  
14:25:27 2 and Rule 1.7 demonstrates that there is an  
14:25:32 3 irreconcilable conflict of interest. He doesn't have  
14:25:35 4 the consent.  
14:25:36 5 Then you get to Rule 1.4A1. 1.4A1 is another  
14:25:43 6 clear violation of his ethical responsibility. It says  
14:25:47 7 that the attorney has a -- quote, the lawyer shall, one,  
14:25:54 8 promptly inform the client of any decision or  
14:25:58 9 circumstances with respect to which the client's  
14:26:00 10 informed consent is required by these rules.  
14:26:04 11 These rules include 1.7, and in fact it's very  
14:26:07 12 specific when you look at 1.7 and 1.13 that he must  
14:26:15 13 obtain the informed consent of the client. Guess what?  
14:26:19 14 There's never been a disclosure to Mr. Bidsal that Mr.  
14:26:24 15 LeGrand was having conversations with the attorneys for  
14:26:28 16 Mr. Golshani. Never. They have never disclosed -- he  
14:26:33 17 has never disclosed to my client that he had been  
14:26:36 18 contacted by them and they wanted him to give  
14:26:40 19 information about communications that he had had with a  
14:26:43 20 representative of his client. That's never happened.  
14:26:46 21 Nor has he ever asked for that consent to be able to  
14:26:51 22 have those communications, and he's not allowed to do  
14:26:53 23 that. That's a violation of the privilege.  
14:26:56 24 That's the problem. There's nowhere for them to  
14:26:59 25 go with this because Mr. LeGrand has not fulfilled his

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14:27:04 1 ethical duties under the Rules of Professional Conduct

14:27:07 2 to his client and certainly not to a representative of

14:27:10 3 the client in the form of Mr. Bidsal, who is also a

14:27:13 4 manager of the company.

14:27:14 5 He would have to receive that disclosure he was

14:27:17 6 having a communication at all and obtain his consent,

14:27:22 7 and once that consent was given, that still wouldn't

14:27:26 8 change the privilege issue.

14:27:28 9 MR. LEWIN: Can I --

14:27:29 10 ARBITRATOR WALL: No.

14:27:30 11 MR. SHAPIRO: I want to go to this whole thing

14:27:33 12 about consent. When you think about it, who has to give

14:27:38 13 consent? Green Valley Commerce. That is the client.

14:27:40 14 How does Green Valley consent? According to the

14:27:44 15 operating agreement, there's a majority vote. And

14:27:47 16 there's an arbitration dispute if they can't get a

14:27:52 17 majority vote. We're here under that arbitration

14:27:56 18 clause. 50/50 ownership. You can't get an affirmative

14:27:59 19 vote of the managers or members of that company to waive

14:28:02 20 a privilege. It can't be. When you look at the

14:28:06 21 operating agreement, unless Shawn agreed to provide

14:28:12 22 consent, it doesn't exist.

14:28:14 23 ARBITRATOR WALL: Mr. Lewin.

14:28:16 24 MR. LEWIN: I want to point out that the rule

14:28:18 25 that Mr. Gerrard talks about --

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14:28:21 1 ARBITRATOR WALL: Which one? Page 1124

14:28:23 2 A. 49.115 Section 5 talks about communications

14:28:29 3 between two or more clients.

14:28:32 4 ARBITRATOR WALL: The client is Green Valley.

14:28:34 5 MR. LEWIN: So that rule doesn't apply because

14:28:36 6 that rule applies when you have two clients and a lawyer

14:28:43 7 is representing both of them and now one is against the

14:28:46 8 other. That's not the case here.

14:28:49 9 ARBITRATOR WALL: That would be an exception.

14:28:52 10 That circumstance you just described is what subsection

14:28:56 11 5 of 49.115 is about.

14:28:59 12 MR. LEWIN: That's not what we have here.

14:29:01 13 MR. GERRARD: That's what I was saying.

14:29:05 14 MR. LEWIN: Mr. Bidsal was not a client. This

14:29:07 15 operating agreement was drafted and there's a waiver

14:29:10 16 that Mr. Garfinkel was pointing out. There's a waiver

14:29:14 17 in here on Section 1 on Article 13 of Page 20, but this

14:29:23 18 has to do with legal counsel to the company.

14:29:30 19 MR. GERRARD: That's not -- sorry.

14:29:32 20 MR. LEWIN: He is trying to convolute the fact he

14:29:38 21 may have had conversations with a co-manager, and as a

14:29:41 22 lawyer that restricts his ability to testify about

14:29:44 23 conversations about what he did in terms of drafting

14:29:47 24 this agreement and what conversations he's had with both

14:29:51 25 of them together and all kinds of things. It doesn't

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14:29:55 1 hold water that Mr. LeGrand is unable to testify. Page 1125  
14:29:58 2 On top of which, as I mentioned before, the  
14:30:02 3 documents that -- some of the documents I intend on  
14:30:06 4 asking questions about, including this -- the operating  
14:30:10 5 agreement, has been disclosed and has been disclosed  
14:30:13 6 both in his prior deposition, in the arbitration  
14:30:18 7 hearing, and he's been -- should be allowed to testify  
14:30:26 8 about those here. It's quite common when you have  
14:30:29 9 people talking about the interpretation of an agreement  
14:30:32 10 to have the drafter of the agreement testify about it.  
14:30:36 11 That is neither for or against the interest of the  
14:30:40 12 company. It is what it is.  
14:30:41 13 I want to correct Mr. Gerrard. He said it's  
14:30:45 14 never been disclosed that Mr. LeGrand has had  
14:30:49 15 conversations with Mr. Golshani. In the first  
14:30:52 16 arbitration and in his deposition he testified about the  
14:30:54 17 fact that Mr. Golshani had contacted him after he  
14:30:57 18 received Mr. Bidsal's offer and had communications with  
14:31:03 19 him. Those documents were disclosed, actually, in the  
14:31:08 20 first arbitration and he testified about them. So Mr.  
14:31:13 21 Gerrard is wrong when he says the fact that Mr. Golshani  
14:31:15 22 has never had conversations with him, never been  
14:31:18 23 disclosed or known is untrue.  
14:31:21 24 Lastly, it's not coincidental that in his first  
14:31:25 25 arbitration -- in the proceeding, Mr. LeGrand testified

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14:31:31 1 about how Mr. Bidsal contacted him shortly before his  
14:31:36 2 deposition and asked him if he wanted to do legal work  
14:31:38 3 for him.

14:31:39 4 ARBITRATOR WALL: Well, that doesn't matter.

14:31:41 5 MR. SHAPIRO: I want to follow up on what Rod  
14:31:44 6 said. It is true Mr. LeGrand did disclose he had  
14:31:49 7 conversations directly with Ben. In fact, he wrote an  
14:31:51 8 adversarial letter to me that he didn't send because he  
14:31:55 9 said, "Wait a second. I think I've got a conflict."  
14:31:59 10 And he never sent the letter. In his testimony he said,  
14:32:03 11 "I started to realize I was getting into a conflict  
14:32:09 12 situation. I didn't want anything to do with it."

14:32:13 13 Mr. LeGrand is acknowledging himself there's some  
14:32:14 14 conflict issues and we're asserting it. The issues  
14:32:17 15 didn't arise because -- I mean, look, if it was the same  
14:32:18 16 issues in the first arbitration and the second  
14:32:20 17 arbitration, we wouldn't be here. Right? This would be  
14:32:21 18 resolved. We're here because the issues are different.  
14:32:25 19 The issues of conflict didn't come up in the first one.  
14:32:28 20 It is coming up now. The problem is what LeGrand  
14:32:32 21 thought when he drafted the document is irrelevant  
14:32:35 22 because the document needs to be what the intent of the  
14:32:39 23 parties were and LeGrand is not a party. The only  
14:32:43 24 testimony he can give is based upon conversations he had  
14:32:48 25 that are protected by the privilege.

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14:32:49 1 ARBITRATOR WALL: Is he a Nevada lawyer? Page 1127  
14:32:55 2 MR. LEWIN: Yes.  
14:32:55 3 MR. GERRARD: Yes.  
14:32:55 4 MR. LEWIN: Testimony would be about what  
14:32:56 5 conversations he had with both.  
14:32:58 6 ARBITRATOR WALL: I'm concerned about not only  
14:33:00 7 the invocation of the privilege. Frankly, I'm concerned  
14:33:04 8 on behalf of the lawyer. I'm going to start by taking  
14:33:08 9 him on voir dire on these issues to lay some foundation  
14:33:11 10 for it, and then I'll let both counsel inquire without  
14:33:15 11 getting into the substance of the communications. Fair  
14:33:18 12 enough?  
14:33:25 13 All right, Mr. LeGrand, this is David Wall. I  
14:33:29 14 appreciate your patience. Can you hear me all right?  
14:33:33 15 THE WITNESS: Yes, sir.  
14:33:34 16 ARBITRATOR WALL: There's been a fair amount of  
14:33:36 17 discussion outside your presence. There's certain  
14:33:38 18 issues that I want to reach by way of sort of a  
14:33:42 19 quasi-voir dire. All right?  
14:33:45 20 First of all, the issue that has come up was one  
14:33:51 21 of privilege. Your client, as I understood it, is Green  
14:33:59 22 Valley Commerce, LLC. Is that right?  
14:34:02 23 THE WITNESS: Yes, sir.  
14:34:05 24 ARBITRATOR WALL: Tell me if and how you believe  
14:34:13 25 as the lawyer or former lawyer for Green Valley

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14:34:18 1 Commerce, LLC that the attorney/client privilege has  
14:34:23 2 been waived such that you can discuss conversations that  
14:34:27 3 you had with Mr. Golshani and conversations that you had  
14:34:30 4 with Mr. Bidsal. I don't want to know the substance of  
14:34:35 5 the conversations. Do you understand where I'm going?  
14:34:38 6 THE WITNESS: Um, well, I do understand where  
14:34:41 7 you're going, and at this point, having been threatened  
14:34:46 8 with Bar action, I'm going to decline to testify until I  
14:34:49 9 have had the opportunity to consult independent legal  
14:34:54 10 counsel.  
14:34:55 11 ARBITRATOR WALL: Okay. The client is Green  
14:35:00 12 Valley Commerce, LLC. Right?  
14:35:02 13 THE WITNESS: Yes. But, you know, entity  
14:35:07 14 privilege is a little bit different than an individual  
14:35:14 15 privilege, and Mr. Golshani, as the major funder and a  
14:35:25 16 co-manager in principal, has waived any privilege.  
14:35:33 17 ARBITRATOR WALL: Do you believe that waiver  
14:35:35 18 extends to conversations that you had with Mr. Bidsal?  
14:35:41 19 THE WITNESS: Well, of course it does. That's  
14:35:43 20 how entity privilege works. As between the members  
14:35:46 21 there is no privilege to Mr. Bidsal or to Mr. Golshani.  
14:35:51 22 I am free to disclose to either of -- my understanding  
14:35:54 23 of the Nevada ethics are that I'm free to disclose to  
14:35:59 24 either member anything that the other member or manager  
14:36:02 25 says.

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14:36:03	1	ARBITRATOR WALL: I don't disagree with that.	Page 1129
14:36:06	2	The question is whether you can disclose communications	
14:36:09	3	by either member to someone else without each member's	
14:36:22	4	consent and/or waiver of the privilege.	
14:36:25	5	THE WITNESS: Well, I don't know the answer to	
14:36:27	6	that, so I'm going to consult with either Bar counsel or	
14:36:30	7	independent legal counsel.	
14:36:31	8	ARBITRATOR WALL: All right. All right.	
14:36:38	9	Mr. Lewin, any questions at this time for	
14:36:41	10	Mr. LeGrand?	
14:36:42	11	MR. LEWIN: Yes.	
14:36:43	12	EXAMINATION	
14:36:43	13	BY MR. LEWIN:	
14:36:43	14	<b>Q. Mr. LeGrand, you gave your deposition in --</b>	
14:36:48	15	ARBITRATOR WALL: You might want to look in there	
14:36:50	16	and speak as loud as you can.	
14:36:52	17	MR. LEWIN: I thought the microphone is here.	
14:36:57	18	ARBITRATOR WALL: Okay.	
14:36:57	19	BY MR. LEWIN:	
14:36:58	20	<b>Q. Mr. LeGrand, you did your deposition in front of</b>	
14:37:01	21	<b>Mr. Shapiro and Mr. Garfinkel. Right?</b>	
14:37:04	22	A. Yes, sir.	
14:37:05	23	<b>Q. And did Mr. Shapiro raise the issue of</b>	
14:37:08	24	<b>attorney/client privilege?</b>	
14:37:10	25	A. No, sir.	



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14:37:10 1 Q. And you produced your entire file in that  
14:37:13 2 deposition. Right?  
14:37:14 3 A. I'm sorry.  
14:37:16 4 Q. You produced your entire file in that deposition.  
14:37:19 5 Right? You produced your entire file in that  
14:37:27 6 deposition. Is that right?  
14:37:28 7 A. I did.  
14:37:30 8 Q. That was pursuant to a Subpoena issued by Mr.  
14:37:33 9 Garfinkel. Right?  
14:37:35 10 A. Yes.  
14:37:35 11 Q. And Mr. Shapiro never objected to that Subpoena,  
14:37:39 12 did he?  
14:37:39 13 A. Not to my knowledge.  
14:37:40 14 Q. And you had conversations with -- regarding this  
14:37:43 15 operating agreement, without telling us the substance of  
14:37:47 16 the discussions, with Mr. Bidsal and Mr. Golshani in  
14:37:52 17 both of their presences. Right?  
14:37:55 18 A. Yes.  
14:37:55 19 Q. And since the first arbitration, has any  
14:37:58 20 representative of Mr. Bidsal contacted you and told you  
14:38:01 21 that you should not talk to Mr. Golshani or any of his  
14:38:04 22 representatives?  
14:38:05 23 A. No, sir.  
14:38:06 24 Q. Did you understand if you spoke to me to set up  
14:38:10 25 this deposition you were doing so as Mr. Golshani's

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14:38:13 1 lawyer?

14:38:13 2 A. Yeah.

14:38:15 3 Q. And during the arbitration proceeding that you

14:38:25 4 also testified in with respect to Judge Haberfeld, did

14:38:31 5 Mr. Shapiro or his other associated lawyer ever raise

14:38:35 6 the attorney/client privilege?

14:38:36 7 A. No, sir.

14:38:39 8 MR. LEWIN: Anything else?

14:38:41 9 MR. GARFINKEL: (Moved head.)

14:38:42 10 MR. LEWIN: I don't think I have anything else.

14:38:44 11 ARBITRATOR WALL: I don't know if you need to

14:38:46 12 question him because he said he's not going to question

14:38:49 13 him.

14:38:49 14 MR. GERRARD: If he's not going to testify,

14:38:52 15 there's no reason to. I've got questions if he is.

14:38:56 16 ARBITRATOR WALL: I'm not going to put

14:38:58 17 Mr. LeGrand in that position to somehow direct him to

14:39:05 18 give up his right to speak to independent counsel or Bar

14:39:08 19 counsel or whoever he wants, to tell you the truth. We

14:39:12 20 can figure out what to do with respect to the closing of

14:39:15 21 this hearing, but I'm certainly not going to put him in

14:39:20 22 that position.

14:39:21 23 So all right. Mr. LeGrand, you are free to log

14:39:26 24 off at this time and we will contact you -- someone will

14:39:30 25 contact you if it becomes necessary to have you testify

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14:39:33 1 at some point in the future. All right?

14:39:37 2 THE WITNESS: Yes, sir. Thank you.

14:39:39 3 ARBITRATOR WALL: I'm not going to put him in

14:39:41 4 that spot.

14:39:42 5 MR. LEWIN: I understand. I'm not quarrelling

14:39:44 6 with that, but I am quarrelling with the waiting and

14:39:48 7 sandbagging and waiting until we get to this hearing

14:39:52 8 when we know that we have this day to finish the hearing

14:39:58 9 and tomorrow is closing arguments.

14:40:00 10 ARBITRATOR WALL: There's been a little bit of

14:40:02 11 that on both sides frankly.

14:40:02 12 MR. GARFINKEL: If they filed a motion in limine

14:40:05 13 before, why wouldn't they do it for something as

14:40:06 14 important as this?

14:40:06 15 ARBITRATOR WALL: Well, they filed a motion in

14:40:07 16 limine, and you still brought the witness and had them

14:40:10 17 reading documents nobody had ever seen. So I think

14:40:13 18 we're on a level playing field, frankly.

14:40:15 19 MR. LEWIN: There's a little bit of difference.

14:40:18 20 Ms. Schindler's testimony is a minute part of the case.

14:40:23 21 ARBITRATOR WALL: I don't know what it's going to

14:40:25 22 be.

14:40:25 23 MR. LEWIN: Mr. LeGrand, who is the drafter of

14:40:27 24 the agreement and testified before is a major part of

14:40:31 25 our case.

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14:40:32 1 ARBITRATOR WALL: Understood. I'm not going to  
14:40:34 2 make him testify now.  
14:40:35 3 MR. LEWIN: I know that. I don't know how we  
14:40:38 4 proceed.  
14:40:39 5 ARBITRATOR WALL: My inclination would be that we  
14:40:45 6 finish everything but Mr. LeGrand. That Mr. LeGrand has  
14:40:50 7 the opportunity, if somebody still wants to call him as  
14:40:54 8 a witness, to seek independent counsel on that.  
14:40:57 9 Honestly, I would probably want --  
14:41:00 10 MR. SHAPIRO: Some briefing, Your Honor?  
14:41:02 11 ARBITRATOR WALL: -- briefing on this issue in  
14:41:09 12 addition to, you know, the position that Mr. LeGrand is  
14:41:18 13 going to take. We may brief it and I might say, "He can  
14:41:22 14 testify," and he might say "I'm not going to."  
14:41:25 15 MR. LEWIN: I have a different possible solution.  
14:41:28 16 I'm not sure that I want to use it to the exclusion.  
14:41:31 17 Under the rules I think that you are able to take  
14:41:34 18 testimony by way of prior depositions even though they  
14:41:39 19 may have not been taken in this case, prior deposition  
14:41:41 20 testimony about matters relating to -- that may have  
14:41:44 21 some bearing on this case. I think the rules -- by the  
14:41:48 22 way -- the way I read the rules -- and I have to admit  
14:41:51 23 that I may not be the most expert on that -- you have  
14:41:55 24 flexibility in that regard as to how you take testimony  
14:41:58 25 and to what extent you determine you want to apply the

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14:42:02 1 rules of evidence.

14:42:03 2 ARBITRATOR WALL: It's a little different here

14:42:04 3 because it's not simply the JAM rules because it also

14:42:09 4 says it's administered by JAMS -- originally said, I

14:42:14 5 think, they're expedited rules, but we stipulated out of

14:42:16 6 that to the comprehensive rules. But it also says it's

14:42:19 7 governed by the federal authority, so...

14:42:22 8 MR. LEWIN: Well, let me just say --

14:42:25 9 ARBITRATOR WALL: It doesn't say governed by

14:42:28 10 the -- administered by JAMS but governed by the Federal

14:42:33 11 Arbitration Act.

14:42:34 12 MR. LEWIN: There's an issue about how the

14:42:36 13 federal arbitration rule is going to play with that.

14:42:39 14 I'm just not prepared to talk about that.

14:42:42 15 ARBITRATOR WALL: Got it.

14:42:43 16 MR. LEWIN: We briefed that in the appeal to some

14:42:47 17 extent, which set of rules apply. We came here to

14:42:51 18 finish this up. Mr. Golshani -- I can't finish

14:42:54 19 Mr. Golshani's testimony until I know what's happening

14:42:57 20 with Mr. LeGrand.

14:42:59 21 ARBITRATOR WALL: Why?

14:43:00 22 MR. GERRARD: Why?

14:43:01 23 MR. LEWIN: Because Mr. LeGrand's not going to be

14:43:03 24 able to testify. I had matters that I expected

14:43:06 25 Mr. LeGrand to testify to that I wouldn't necessarily

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14:43:09 1 need Mr. Golshani to testify to. In order to prepare  
14:43:10 2 Mr. Golshani to testify about that stuff, he's not  
14:43:13 3 prepared to testify because I didn't need him.  
14:43:15 4 Mr. Golshani -- the issue really is the threat of the  
14:43:21 5 complaint is really what scared him off.

14:43:24 6 ARBITRATOR WALL: Well, look. I would have  
14:43:26 7 brought it up with him before he testified. It was  
14:43:28 8 clear to me that there's an issue here that I wanted to  
14:43:31 9 make sure before the attorney testified that there was a  
14:43:33 10 waiver of privilege. So it was going to come up if --  
14:43:38 11 you know, sua sponte from me one way or another, so --  
14:43:42 12 just because I have to satisfy myself that there's been  
14:43:45 13 a waiver any time an attorney testifies.

14:43:48 14 MR. LEWIN: Here's where we are. We're supposed  
14:43:51 15 to be finished with Mr. Golshani and have Mr. Manabat.  
14:43:56 16 We're supposed to be finished with these people today  
14:43:57 17 and have closing tomorrow. Closing is not going to  
14:44:00 18 happen without Mr. LeGrand.

14:44:04 19 ARBITRATOR WALL: Correct. So we have tomorrow  
14:44:05 20 afternoon.

14:44:07 21 MR. LEWIN: If we had -- if Mr. Bidsal's counsel  
14:44:09 22 had raised this issue in a timely fashion, we could have  
14:44:13 23 maybe even postponed these hearings until we figured  
14:44:16 24 this out or briefed it so we wouldn't be doing it at the  
14:44:21 25 last minute. We spent a lot of money coming up here and

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14:44:25 1 preparing for these two hearings. It's not our fault. Page 1136  
14:44:28 2 It's not our fault. I truly believe the end result,  
14:44:32 3 we're going to find a waiver by way of prior testimony.  
14:44:36 4 I don't think you can say -- in other words --  
14:44:39 5 ARBITRATOR WALL: I haven't seen it.  
14:44:40 6 MR. LEWIN: I have. I know which questions I was  
14:44:43 7 going to ask him.  
14:44:45 8 As I said, finishing with Mr. -- I can finish  
14:44:50 9 with Mr. Golshani but that -- that puts us at a  
14:44:56 10 disadvantage because unless they finish with their  
14:45:00 11 cross-examination of him, with reserving the right to  
14:45:04 12 bring him back if we need to if Mr. LeGrand is not able  
14:45:09 13 to testify, that's one issue. I don't want to put him  
14:45:14 14 on unprepared to testify about areas that I didn't  
14:45:18 15 think I had to cover because I do -- from his prior  
14:45:20 16 testimony, not from my conversations with him. I knew  
14:45:23 17 what his prior testimony was. I knew what he was going  
14:45:26 18 to answer.  
14:45:27 19 I mean, ultimately what this really comes down to  
14:45:35 20 it's really what the drafter of the agreement -- is he  
14:45:39 21 going to admit there's a typo? Is he going to say  
14:45:43 22 there's not?  
14:45:44 23 ARBITRATOR WALL: I don't know if I agree with  
14:45:45 24 that.  
14:45:46 25 MR. GERRARD: Judge, I'm sorry. I just have to

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14:45:49 1 respond. Obviously this insinuation that this is  
14:45:52 2 sandbagging is ridiculous. We did not know whether  
14:45:56 3 Mr. LeGrand was going to come and appear and testify or  
14:45:58 4 not until he does it. He has an ethical responsibility  
14:46:01 5 to preserve the privilege and he has also ethical  
14:46:05 6 responsibilities under the Rules of Professional  
14:46:06 7 Conduct. It's not my job to call him up and say, "This  
14:46:10 8 is what your duties are. What are you planning on  
14:46:12 9 doing?" It's his job to preserve those -- you know,  
14:46:17 10 those rights that belong to the client, and we've  
14:46:21 11 already gone through that whole argument. I'm not going  
14:46:26 12 to make it again about why the privilege exists. They  
14:46:27 13 don't have to agree, but it cannot be waived. It cannot  
14:46:31 14 be waived unless they've asked that specific question  
14:46:33 15 before, and they haven't.

14:46:34 16 So the point here is this is not about and has  
14:46:37 17 never been about what David LeGrand drafted or didn't  
14:46:41 18 draft. We have those documents. We have them. We can  
14:46:43 19 see exactly what he did, and his testimony about what  
14:46:48 20 those things mean is what they want, and that testimony  
14:46:52 21 isn't relevant because it doesn't matter what he thinks  
14:46:55 22 it means. It only matters what Mr. Bidsal and  
14:46:59 23 Mr. Golshani thought that it meant. It's their intent.  
14:47:01 24 It's their contract.

14:47:02 25 Mr. LeGrand, his testimony about what it means is



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14:47:05 1 completely 100 percent irrelevant unless he testifies  
14:47:10 2 that he gained that understanding of the intent by  
14:47:14 3 divulging a privileged communication with my client.  
14:47:17 4 That's the whole point. He cannot testify about  
14:47:19 5 communications he had with a client representative. He  
14:47:22 6 can't do it. It hasn't been waived. Mr. Bidsal has  
14:47:25 7 never waived it and the entity has never waived it, and  
14:47:26 8 it's never been raised to be waived. It has to be  
14:47:30 9 waived in writing, according to the rules.

14:47:33 10 Counsel keeps arguing that it just can be  
14:47:36 11 magically erased because some questions were asked to  
14:47:39 12 him about who drafted the document before. That doesn't  
14:47:44 13 require divulging an attorney/client communication. For  
14:47:48 14 him to say who drafted the document is for him to say  
14:47:49 15 what he saw happen. Not what my client thought that the  
14:47:55 16 document meant or what Mr. Golshani thought that the  
14:47:58 17 document meant. Those are very different things.

14:48:01 18 And so, you know, I take great exception to this  
14:48:04 19 idea that we're sandbagging. We didn't know if they  
14:48:07 20 were going to call him. We're not sandbagging anything.  
14:48:08 21 We didn't know -- just because they put him on a witness  
14:48:10 22 list? They put a lot of names on the list that haven't  
14:48:13 23 been called. We don't know what's going to happen until  
14:48:17 24 it happens. We don't know that he's going to breach his  
14:48:20 25 obligations to the client until it happens. I warned