DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSBILITY

In the Matter of	)	
	)	
BENJAMIN M. SOTO, Esquire,	)	Bar Docket No. 2015-D087
	)	
Respondent	)	
	)	
Member of the Bar of the District of Columbia Court of Appeals	)	
Bar Number 453728	)	
Date of Admission: January 6, 1997	)	
	)	

BENJAMIN M. SOTO'S ANSWER TO SPECIFICATION OF CHARGES

Benjamin M. Soto ("Mr. Soto"), by his undersigned counsel, for his Answer to the Specification of Charges ("SOC") filed in the above-captioned matter, states as follows:

Responding *seriatim* to the numbered paragraphs of the SOC, Mr. Soto asserts:

1. Admitted.

2. Admitted that Mr. Soto is the President of Premium Title Company which employs under his supervision a staff of approximately 20 professionals. Premium Title closes approximately 1500 real estate transactions per year in the District of Columbia, Maryland and Virginia.

3. Admitted.

4. Admitted.

5. Mr. Soto admits that D.C. Code § 42-2405 identifies certain duties of a Settlement Agent, though the quotation of that provision in the SOC is not complete, and that section does not fully describe the appropriate actions of a Settlement Agent.

6. Mr. Soto admits that he was and is a Title Insurance Producer and, like other Title Insurance Producers, Mr. Soto and Premium Title are entitled to a commission when a purchaser secures title insurance through a settlement that closes at Premium Title.

7. Admitted.

8. Mr. Soto admits that William Duggan ("Mr. Duggan") engaged Premium Title to close a loan from City First Bank to be secured by 2461 18th Street, N.W., Washington, D.C. (the "Property"), which Mr. Duggan initially thought was owned by his company, 2461 Corporation. Mr. Soto agreed to handle the transaction.

9. In December 1996, Mr. Duggan, through 2461 Corporation, had purchased promissory notes secured by the Property which were in default, thereby providing Mr. Duggan the opportunity to acquire the Property by foreclosing on it or by accepting a Deed in Lieu of Foreclosure. Mr. Duggan assumed – incorrectly – that title had been transferred to him in 1996 but learned that two attempted foreclosures that would have vested title in his company had never been consummated. As a result, title to the Property remained vested in Jack Littlejohn, who had died in 1993.

10. Mr. Soto admits that Premium Title's staff prepared and submitted for recordation in late 2012 and early 2013 a Deed in Lieu of Foreclosure from Homer Littlejohn, Personal Representative for the Estate of Jack Littlejohn, to Lenjeswil, LLC; a Deed of Trust securing the

loan from City First Bank; and FP-7/C tax forms to the D.C. Recorder of Deeds. The transaction is described more fully in paragraph 24 below.

11. Mr. Soto admits the allegations of Paragraph 11 of the SOC, as he understood them from Mr. Duggan, although Mr. Soto was not initially aware that Mr. Duggan had agreed to pay Ara Parker's ("Attorney Parker") legal fees for the purpose of re-opening the Jack Littlejohn Estate to enable the Deed in Lieu of Foreclosure transaction.

12. Mr. Soto admits that he learned that Attorney Parker represented Homer Littlejohn for the purpose of re-opening the Estate of Jack Littlejohn to facilitate transfer of title of the Property by means of a Deed in Lieu of Foreclosure.

13. Mr. Soto is aware that Mr. Duggan directly contacted Mr. Homer Littlejohn, but Mr. Soto lacks information sufficient to admit or deny the balance of Paragraph 13.

14. Mr. Soto admits that he and Mr. Duggan understood that Homer Littlejohn did not expect additional payment for transfer of title to the Property and that Attorney Parker understood this also, since Jack Littlejohn had already received the proceeds of loans secured by the Property and acquired by Mr. Duggan's company for $350,000, so that the Littlejohn Family had already received consideration for the Property's transfer.

15. Admitted.

16. Admitted.

17. Admitted.

18. Mr. Soto admits that, at his direction, a clerk at Premium Title prepared the documents referenced in Paragraph 18 of the SOC and that they were emailed to Attorney Parker.

19. Mr. Soto admits that the computations set forth in the FP-7/C form as originally prepared are set forth in Paragraph 19 of the SOC, and that recordation and transfer tax for a zero-consideration transaction are based on the property's tax assessed value.

20. Mr. Soto admits that the documents were executed by Homer Littlejohn on or about December 17, 2012, but Mr. Soto lacks information as to the presence of Attorney Parker and the notary referenced in Paragraph 20 of the SOC as Mr. Soto was not present.

21. Admitted.

22. Admitted that documents relating to the recordation of both the Deed and the City First Bank refinancing transaction were transmitted to Mr. Duggan.

23. Admitted.

24. The Deed and recordation tax form (FP-7/C) that Homer Littlejohn had signed in December 2012 were to be recorded simultaneously with the refinancing loan Mr. Duggan had applied for from City First Bank, scheduled to close in February 2013. When Mr. Soto reviewed the Deed and FP-7/C leading up to that closing, it became clear that characterizing that deed as a zero-consideration transaction was incorrect. Because loans had been funded to Jack Littlejohn and had remained outstanding as of 1996 when Mr. Duggan sought to buy the notes secured by the Property for his Madam's Organ bar, he purchased those loans for $350,000 paid for by a note from Mr. Duggan's Corporation. Since this was not a zero-consideration (i.e., gift) transaction, the proper method of characterizing it was to identify the consideration Mr. Duggan originally paid for the loans secured by the Property, plus the other sums Mr. Duggan had expended from 1996 to 2012 for the Property—including real estate taxes and repair costs—i.e., the time period during which Mr. Duggan thought (incorrectly) that he had title to the Property. The actual consideration

involved in Mr. Duggan's acquisition of the Property was therefore $350,000 (the original amount paid for the loans) plus $100,00, which is what Mr. Duggan told Mr. Soto he had paid since 1996 for real estate taxes and repair costs. The total consideration was thus $450,000. After Mr. Duggan informed Premium Title personnel that he had obtained Homer Littlejohn's authorization to correct the Deed and FP-7/C to reflect the actual consideration (see Mr. Duggan's October 6, 2016 Affidavit, ¶ 23, attached as Exhibit A), both the Deed and FP-7/C were modified so they could be recorded together with the City First Bank loan to be secured by the Property. To confirm that his theory of how to calculate consideration for a Deed in Lieu of Foreclosure transaction was correct, Mr. Soto contacted the D.C. Recorder of Deeds, Ida Williams. She confirmed that his approach was correct, and the Deed, FP-7/C, and tax payments based on them were ultimately submitted for recordation in April 2013. Accordingly, Mr. Soto denies that he made any false statement and asserts that the District obtained the proper amount of tax it was due for the transfer of title by means of a Deed in Lieu of Foreclosure.

25. Mr. Soto admits that, through an oversight at Premium Title, Attorney Parker was not informed of the changes when they occurred.

26. Mr. Soto incorporates by reference his response to Paragraph 24 of the SOC. Mr. Soto denies the assertion in Paragraph 26 of the SOC that the consideration amount was "false." Mr. Soto asserts that $450,000 was the properly calculated consideration that applied to the transfer of title for the Property, consistent with the D.C. Recorder of Deeds' tax policy for a Deed in Lieu of Foreclosure, and the tax computed with respect to $450,000 was the proper amount of tax that was payable (and that was paid) for the transaction. See Exhibit B attached hereto, an email from Robert McKeon, Deputy Chief Counsel, D.C. Office of Tax and Revenue, confirming that

"[g]enerally the consideration for the deed [in lieu of foreclosure] should be the amount the lender is paying for the note, plus any other consideration as to the acquisition of the real estate."

27. Mr. Soto admits that, through an oversight at Premium Title, Attorney Parker was not informed by Premium Title personnel of the change when it occurred, but Mr. Soto subsequently informed her and explained the correction, which would have no effect on Attorney Parker's client since Mr. Duggan was to pay all transfer and recording taxes.

28. Admitted that both the City First Bank and the Littlejohn deeds were to be recorded simultaneously.

29. Admitted.

30. Mr. Soto admits that he signed the HUD-1 referenced in Paragraph 30 of the SOC but denies that the consideration amount and recordation and transfer tax calculations reflected on the form were "false." To the contrary, Mr. Soto asserts that the figures reflected the correct and proper consideration, recordation tax, and transfer tax computation amounts. If the consideration were not corrected for the Deed in Lieu of Foreclosure transaction, the District of Columbia Treasurer would have received excess transfer and recordation taxes. See paragraphs 24 and 26 above.

31. Admitted.

32. Admitted.

33. Admitted.

34. Mr. Soto admits Paragraph 34 but clarifies that the recordation of the Deed and Deed of Trust was delayed from the closing date because Premium Title had to wait for the original

Letters of Administration from the Probate Court, which the Recorder of Deeds requires in order to record a Deed executed by an estate.

35. The description of events stated in Paragraph 35 of the SOC is denied. Instead, Mr. Soto explains that when Premium Title's recording clerk, Gabriela Carter ("Ms. Carter"), submitted the documents for recordation, the Recorder of Deeds' clerk believed that the loan secured by the Deed of Trust was a purchase money loan, a portion of which would be exempt from recordation tax. This assumption likely occurred because the Deed of Trust was submitted for recordation along with the Deed transferring title to the Property, as would be the case with routine purchase money loans. The Recorder of Deeds' clerk therefore advised Ms. Carter to return with a *reduced* recording check to reflect a credit for what was erroneously thought by the Recorder of Deeds' clerk to be a purchase money loan entitled to such an exemption. Following this advice, Ms. Carter obtained a new check for the lower amount and returned to record the documents. The Recorder of Deeds' clerk initialed the altered form. Since Ms. Carter had handled the recording, Mr. Soto denies the implication that the recordation tax form for the Deed of Trust was altered at his request; rather, it was altered upon the advice of the Recorder of Deeds' clerk. Mr. Soto was not involved in or aware of the change. Mr. Soto denies that the $450,000 consideration was "false." See paragraphs 24 and 26 above.

36. Mr. Soto admits that the modified tax form and Deed were recorded on April 3, 2013, by Ms. Carter, a Premium Title clerk. See paragraph 35 above.

37. Mr. Soto acknowledges that the lower amount of recordation tax was paid by Premium Title for recordation of the instruments. Mr. Soto denies that he personally retained the excess $6,525 but admits that this sum remained in Premium Title's escrow account and was ultimately refunded to Mr. Duggan after a routine, periodic audit of Premium Title escrow

accounts showed a credit balance in the account. An administrative error resulted in the excess funds not being returned earlier, and any delay in returning the funds to Mr. Duggan was thus inadvertent and not arranged to benefit Mr. Soto or Premium Title.

38. Mr. Soto acknowledges that a Premium Title clerk sent the email referenced in Paragraph 38 of the SOC to Attorney Parker on September 13, 2013. Mr. Soto denies that that the third page of the attached FP-7/C form contained the "appropriate tax calculations" concerning the transfer of the Property. See paragraphs 24 and 26 above.

39. Mr. Soto admits that the Property had been transferred out of the Littlejohn Estate by means of a Deed in Lieu of Foreclosure, as Mr. Soto has explained throughout the investigation undertaken by Disciplinary Counsel and as reflected in the account filed by Attorney Parker.

40. Admitted.

41. Admitted. The FP-7/C correctly calculated the tax due, which was more than 50% of the tax assessed value of the Property and was paid. See Paragraphs 24 and 26 above.

42. Mr. Soto admits that, through an inadvertent error, Attorney Parker was not contemporaneously informed of the modification, which stemmed from correcting the consideration to be consistent with the definition of consideration for a Deed in Lieu of Foreclosure, though she was subsequently informed of it. See paragraph 26 above.

43. Admitted.

44. Admitted. Mr. Soto was not made aware of the audit when it occurred.

45. Mr. Soto does not have knowledge of what Attorney Parker filed as a response.

46. Mr. Soto lacks information sufficient to admit or deny Paragraph 46 of the SOC.

47. Mr. Soto lacks information sufficient to admit or deny Paragraph 47 of the SOC.

48. Mr. Soto lacks information sufficient to admit or deny Paragraph 48 of the SOC.

49. Mr. Soto lacks information sufficient to admit or deny Paragraph 49 of the SOC.

50. Mr. Soto lacks information sufficient to admit or deny Paragraph 50 of the SOC.

51. Admitted.

52. Admitted. Mr. Soto notes that he was not aware of the hearing and therefore was unable to provide information to the Auditor Master.

53. Mr. Soto admits that the Auditor Master made a referral to Disciplinary Counsel but denies that he was informed of such referral when it was made.

54. Mr. Soto acknowledges that Premium Title sent the check referenced in Paragraph 54 to Lenjeswil, LLC on March 20, 2015, but asserts that he was unaware of any referral or pending matter before the Disciplinary Board when the check was sent. Further, Mr. Soto notes that the check was sent as a result of a routine, periodic audit of the Premium Title escrow account which identified that a refund of this amount was due to Lenjeswil. See paragraph 37 above. Any retention of the funds was inadvertent and a product of the lower tax paid as a result of the Recorder of Deeds' advice. See paragraph 35 above.

55. Mr. Soto lacks information sufficient to admit or deny Paragraph 55 of the SOC. Mr. Soto notes that he received an inquiry in connection with this matter from Disciplinary Counsel on March 25, 2015.

56. Admitted.

57. Mr. Soto denies that the response referenced in Paragraph 57 of the SOC was false. He admits that the quoted language was stated in the May 15, 2015 response letter. The calculation of consideration was correct, because the consideration for a Deed in Lieu of Foreclosure is the amount paid for the notes secured by the property and any other consideration paid by the lender. Mr. Duggan's entity paid $350,000 for the Jack Littlejohn notes secured by the Property. Lenders often advance funds such as real estate taxes to protect their security interest in property that is in default, and that is treated as part of the consideration for a transaction such as this one. Mr. Duggan told Mr. Soto he had paid $100,000 in real estate taxes and other costs related to the Property. See paragraphs 24 and 26 above.

58. Paragraph 58 of the SOC misrepresents the nature of the transaction at issue. At all times, Mr. Duggan controlled the transaction, including hiring Premium Title to close the loan secured by the Property; finding and requesting Homer Littlejohn to re-open the Jack Littlejohn Estate so that a Deed in Lieu of Foreclosure could be issued; and communicating with Premium Title, Homer Littlejohn, and Attorney Parker. Mr. Duggan—through his company, 2461 Corporation—also had paid in 1996 for the promissory notes that provided the opportunity to acquire the Property by accepting a Deed in Lieu of Foreclosure. Mr. Duggan controlled the financing of the Property through the City First Bank loan, as well as the creation of Lenjeswil, LLC, a limited liability company of which Mr. Duggan's wife, Mercedes Bien, was the sole member. Additionally, the Madam's Organ bar on the Property is operated by Mr. Duggan. Thus, the entire transaction, from the 1996 purchase of the Littlejohn notes to the 2013 financing, was under Mr. Duggan's control. Transfer of the rights to a Deed in Lieu of Foreclosure to an entity separate from the note-purchasing entity is a routine part of a Deed in Lieu of Foreclosure

transaction frequently employed by lenders after foreclosures and is consistent with Mr. Duggan's control of the transaction.

59. Admitted.

60. In response to the referenced subpoena, Mr. Soto arranged for the production of a copy of the computerized file for the settlement of the Property, which Mr. Soto produced on March 24, 2016 to Disciplinary Counsel. The March 20, 2015 check issued to Lenjeswil, LLC and the related documents referenced in Paragraph 60 of the SOC were not included in that production because the check had been issued well after the computerization of the settlement file – a process which is routinely performed by Premium Title's vendor a few months following closing. There was no intention to conceal this check or the related check stub. They were not included simply because the file closed and was copied well before the check was issued.

61. Mr. Soto denies that the 2016 production did not include the modified Deed and Deed of Trust tax forms.

62. Mr. Soto admits that he provided on October 6, 2016 a signed statement to Disciplinary Counsel, paragraph 18 of which recounts that Mr. Soto had contacted the Recorder of Deeds. Mr. Soto denies that the response includes a false statement. Paragraph 18 of Mr. Soto's response truthfully states that Mr. Soto "contacted Ms. Ida Williams, the Recorder of Deeds, . . . to make sure that *the theory behind* the calculation of the consideration was sound." (Emphasis added.) Paragraph 17 of Mr. Soto's response outlines how Mr. Soto calculated the $450,000 amount as the consideration paid for the Property based on information provided to him by Mr. Duggan. Mr. Soto thus accurately states in his response that he confirmed with Ms. Williams not the specific figure but the computation methodology of taxable consideration for a transaction

involving a Deed in Lieu of Foreclosure, which was based on the loan as consideration plus any other sums advanced by lender/purchaser. As Mr. Soto's response truthfully stated, Ms. Williams agreed with the theory of calculation – an approach later also confirmed by Mr. Robert McKeon, Deputy Chief Counsel of the D.C. Office of Tax and Revenue. See Exhibit B attached hereto.

63. Mr. Soto admits that his October 6, 2016 response included an affidavit from Mr. Duggan (Exhibit A) and that he was later informed that in March 2017, Mr. Duggan asked to withdraw the affidavit because it made inaccurate assertions, though Mr. Duggan never indicated this to Mr. Soto. Mr. Soto notes that Mr. Duggan's actions followed shortly after he made a threat to Mr. Soto that he would "go to the bar" after Mr. Soto explained to Mr. Duggan that it was Mr. Duggan's responsibility to pay the additional tax imposed by the Recorder of Deeds after the purchase money exemption was deemed inappropriate and rescinded. To the extent Paragraph 63 of the SOC implies as much, Mr. Soto denies that he in any way "convinced" Mr. Duggan to make inaccurate assertions in his affidavit. Mr. Soto notes that Mr. Duggan's affidavit was prepared by attorney Roy Kaufmann ("Attorney Kaufmann") based on information provided to him by Mr. Duggan. Mr. Duggan reviewed and modified drafts of the affidavit on several occasions before confirming that the affidavit was accurate. Mr. Duggan, a sophisticated investor, signed the final version with an understanding that he did so subject to the penalty for perjury for a knowingly false statement. In an affidavit provided to Disciplinary Counsel in April 2020, Attorney Kaufmann stated the following as to how Mr. Duggan's affidavit was prepared:

> I am certain that the affidavit signed by Mr. Duggan reflected accurately and completely his description of all the events stated in it. At no time did I or anyone else connected with the preparation of this affidavit tell Mr. Duggan what to say or pressure him in any way . . . I am not aware of any basis for withdrawal of the affidavit and Mr. Duggan has never informed me at any time following his signature of it that he wished to withdraw or modify it.

Roy L. Kaufmann April 3, 2020 Affidavit.

64. Admitted. The Recorder of Deeds had performed an audit of the transaction and determined that the purchase money exemption had been improvidently granted. The Recorder of Deeds rescinded the exemption and made a demand for the repayment of $6,525, plus penalties and interest. Mr. Soto informed Mr. Duggan and tendered to the Recorder of Deeds the penalties and interest, but the tax due, having already been returned to Lenjeswil (Mr. Duggan's affiliated company), was Mr. Duggan's responsibility to pay. Since Mr. Duggan declined to do so, the Recorder of Deeds returned the tendered Premium Title check. Mr. Soto notes that the Recorder of Deeds did *not* challenge the computation of recordation and transfer tax on the Deed itself, which were based on the correctly computed $450,000 consideration

65. Admitted.

66. Mr. Soto admits that he provided the further response and copy of the check and disbursement statements referenced in Paragraph 66 of the SOC. As noted in paragraph 60 above, these documents were not included with the rest of the settlement file that Mr. Soto had previously produced because the check was written well after the settlement file had been electronically scanned, which is the file that was produced. Also as noted in paragraph 60 above, the funds remained in Premium Title's escrow account because of administrative error rectified in 2015, and the delayed return to Mr. Duggan of this balance was not for any effort to earn interest. Premium Title, at Mr. Soto's direction, implemented procedural changes to ensure prompt delivery of any excess funds which may remain in an escrow account, a frequent occurrence in real estate closing transactions.

67. Admitted.

68. Admitted.

69. Mr. Soto admits that the refund of the inadvertently retained excess funds was delayed by administrative system error but not for any improper reason, and the funds were provided to Mr. Duggan before Mr. Soto learned of any investigation by Disciplinary Counsel. See paragraph 66 above.

70. Mr. Soto denies that his conduct violated any of the Rules of Professional Conduct and specifically responds to the following subparagraphs of Paragraph 70 of the SOC:

(a) Mr. Soto denies that he knowingly made false statements of fact to Disciplinary Counsel in the course of its investigation;

(b) Mr. Soto denies that he knowingly failed to respond reasonably to lawful demands for information;

(c) Mr. Soto denies that he engaged in criminal conduct reflecting adversely on his fitness to practice law and denies that his conduct constitutes forgery under D.C. Code § 23-3241;

(d) Mr. Soto denies that he engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(e) Mr. Soto denies that he engaged in conduct that seriously interfered with the administration of justice.

Additional Defenses

A. Mr. Soto asserts that his conduct in the administration of the real estate closing activities referenced in the SOC was proper, appropriate, and met the ethical and practice standards of the real estate settlement industry.

B. Mr. Soto asserts that any errors that may have occurred in the course of the real estate closing activities referenced in the SOC were inadvertent and unintentional.

C. Mr. Soto asserts that his responses to Disciplinary Counsel during the investigation of this matter were based on his best recollection of the facts.

D. Mr. Soto did not intend to and did not personally benefit from any of the transactions described herein. Accordingly, any actions Mr. Soto took were not fraudulent or intended to deprive the District of its rightful revenue.

E. Mr. Soto understood that he had authority to modify the Deed and recordation tax form executed by Mr. Homer Littlejohn, and Mr. Soto in no way benefitted therefrom so that his conduct could not be considered a violation of the forgery law of the District of Columbia.

WHEREFORE, having fully responded to the SOC, Mr. Soto requests that the charges be dismissed.

Dated: December 2, 2020

Respectfully submitted,

Peter R. Kolker (Bar #25478)
Mark W. Foster (Bar # 42978)
Casey Trombley-Shapiro Jonas
(admitted in VA only)
ZUCKERMAN SPAEDER LLP
1800 M Street, NW, Suite 1000
Washington, DC 20036
(202) 778-1800

Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true copy of the foregoing Answer to be served on Joseph C. Perry, Assistant Disciplinary Counsel by electronic transmission this 2nd day of December, 2020.

Peter R. Kolker

Counsel for the Respondent

EXHIBIT A

Affidavit of William T. Duggan

COMES NOW, William T. Duggan after being duly sworn under oath and does declare and state as follows:

1. My name is William T. Duggan. My wife's name is Mercedes Bien.

2. I am aware that there is an investigation by Bar Counsel into Benjamin Soto's handling of a real estate transaction in which I was involved and I have been asked by his attorneys to provide information.

3. Mercedes Bien, through her LLC is the owner of real property known as 2461 18th Street, N.W., Washington, D.C. (the "Property").

4. On December 31, 1996, I (or an entity owned by me) purchased the Property from Daniel Solomon (actually, his limited liability company was called Coles Farm LLC or a similar name) who was the holder of three promissory notes executed by Jack Littlejohn, who had three deeds of trust on the Property to secure the notes. We paid $340,000 which reflected $270,000 that Coles Farm had spent and some additional consideration plus an advance of $10,000 for closing costs. The purchase price was paid in the form of a promissory note at 10% interest with a mortgage.

5. We understood we owned the property after the 1996 settlement, but, at the time, we were told that some work needed to be done before the deed would be recorded. Since Daniel Solomon was a friend of mine, and because we were paying in the form of a promissory note, we did not believe that there was much risk to us.

6. For years we paid on the Coles Farm mortgage which had an interest rate of 10%. We never heard about any continuing problems and we assumed all was resolved and that we were the owners of record of the Property.

7. Ten years later, in 2012 or 2013, we decided to refinance the Property to lower our mortgage payments from the 10% we were paying to Coles Farm. We found a lender named Capitol City Bank. That lender, like all lenders, wanted a title insurance policy. I understand that Premium Title was to do the closing.

8. I was informed by Ben Soto, of Premium Title, that there was a problem with title. The way I understood it, someone had done some sort of foreclosure that was not fully consummated. My recollection is that someone had done some paperwork sometime after 1996. Even though we had already signed papers, Mr. Soto explained that the legal title still had Jack Littlejohn's name on it, much to our surprise.

9. Mr. Soto explained to me that the title insurance company was adamant that they wouldn't insure the earlier foreclosure (even if someone finished the paperwork and executed and recorded a trustee's deed from that foreclosure). Since the records still

had Mr. Littlejohn's name on them. I informed Mr. Soto that I might be able to get into contact with the Littlejohn family and, we decided that one solution would be to go back to the Littlejohn Estate and have them sign a deed directly to us.

10. I undertook the responsibility to reach out to the Littlejohn family, with whom I was familiar.

11. I hired a private detective to find Homer Littlejohn, Jack Littlejohn's son. I explained to him that I had a title problem. He readily acknowledged that neither his father's estate nor any of the family had any interest in the Property because it had been lost long ago at the foreclosure. He and I always fully understood that the Estate would not benefit financially from the transfer. On the other hand, no one was going to try to collect any money from the Estate on the three promissory notes and that had some value to the Estate.

12. We agreed that I would pay him $5000 for his time and trouble in overseeing the re-opening of the Estate of Jack Littlejohn so that a deed could come from the Estate to us. He also required that I pay for the attorney's fees incurred.

13. Attorney Ara D. Parker became the attorney for the estate. I spoke to her at length by phone and she understood why the estate was going to be re-opened – to give Homer the power as Personal Representative, to sign a deed to transfer the Property to us to correct the title problem. She understood fully that there was not going to be any money paid to the Estate.

14. She quoted me a flat fee of $2,000.00 for her fees, which I paid.

15. I understood that the Estate was opened and that Homer Littlejohn was the personal representative and he signed a Deed prepared by Premium Title and sent it to them.

16. In 2013, after Homer Littlejohn delivered his papers, I saw the settlement sheet which correctly showed that, while title was being fixed, title would be taken in the name of an LLC formed by my wife called Lenjeswil, LLC.

17. When we looked at the settlement statement we were angry that the recordation and transfer taxes (which we had agreed to pay in full so that the Littlejohn Estate would not need to pay anything) was based upon the full assessed value of the Property - in excess of $856,000. That meant that our transfer and recordation tax payment would have been almost $25,000 which we thought was 2 or 3 times more than what we should have been paying.

18. Our position was that we <u>never</u> paid $856,000.We paid $340,000 in 1996 and that is what the transfer taxes should be based on.

19. Ben Soto explained that the documents signed by Mr. Littlejohn had included a deed that said "no consideration" had been paid for the Property and, because of that, he

calculated the taxes based on the assessed value. Everyone knew that this was an unusual situation because the consideration had been paid many years ago. I understood that, if the consideration was less than 30% of the assessed value, the District would collect taxes on the entire assessed value.

20. I explained again that we bought the property for $340,000 in 1996 so we knew we had some starting point of calculating what we paid for the Property. I knew that, in addition to the consideration we paid of $340,000, that Mr. Solomon had lent us an additional $10,000 to cover closing costs, so the promissory note was for $350,000. We brainstormed to see what would be a fair way of calculating the consideration as of the date of the refinance. We discussed that, if the Littlejohns had really owned the property since 1996, they would have paid the property taxes and maybe some other things, which we had been paying. I agreed that these additional costs, which I totaled at $110,000 could be added to the $340,000 (which comes up to $450,000) would be a valid calculation of consideration, even though it would mean that we would pay more transfer taxes than we would pay if we stuck with the $340,000 that we paid in 1996.

21. Mr. Soto telephoned me and said he had spoken with the Recorder of Deeds and they had discussed the calculation of the consideration and that the calculation method was acceptable.

22. Ben also explained to me that, in addition, the title insurance company did not like wording he had put on the deed that referred to the old foreclosure because, in their minds, that foreclosure was not effective.

23. I spoke with Homer Littlejohn and explained that the documents needed to be changed to get rid of the mention of the old foreclosure and to specify $450,000 as the amount on the deed instead of the words "no consideration" to make the calculation of the taxes accurate so we were not paying more than we should pay. His immediate response was that we should do "whatever we needed to do" (his words), because he knew it did not affect the Estate. He was insistent that this be done without him having to come all the way back to Premium's office to sign anything over again. I told him I would let Premium know. He also asked me to call Ms. Parker.

24. I telephoned Ms. Parker the same day and explained exactly the same thing to her. She said that she was fine with any changes, as long as there would be "no financial impact on the estate" (her words). I also called Premium Title about the conversations.

25. After Premium did the corrections and the refinance occurred, I paid Mr. Littlejohn what I owed him.

26. Several months later, Mr. Littlejohn called me and told me that Ms. Parker was asking him to pay her more money for her fees.

27. Ms. Parker then called me and asked me to pay more fees and I told her that we had a deal for a flat fee and that I would not pay her any more.

William T. Duggan

SUBSCRIBED AND SWORN to before me by William T. Duggan this 6th day of October, 2016

NOTARY PUBLIC

My commission expires:

Asha T. Royal
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires July 14, 2019

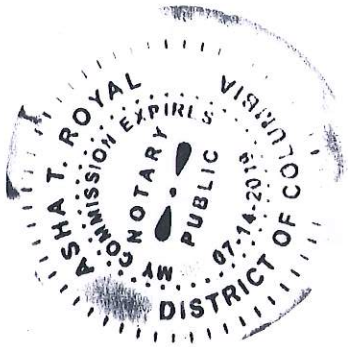

EXHIBIT B

Ben Soto

From: McKeon, Robert (OCFO) <robert.mckeon@dc.gov>
Sent: Friday, February 28, 2020 4:44 PM
To: Ben Soto
Subject: RE: Deed in Lieu of Foreclosure

Ben - Generally the consideration for the deed should be the amount the lender is paying for the note, plus any other consideration as to the acquisition of the real estate. Hope this helps. Bob

Robert McKeon
Deputy Chief Counsel
DC Office of Tax and Revenue
(202) 442-6513
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From: Ben Soto <bsoto@premiumtitlellc.com>
Sent: Friday, February 28, 2020 11:31 AM
To: McKeon, Robert (OCFO) <robert.mckeon@dc.gov>
Subject: Deed in Lieu of Foreclosure

Hi Bob,

I have a general question. In cases involving a Deed in Lieu of Foreclosure where the secured lender purchased and was assigned the Note, is the consideration the amount the lender paid for the Note/Debt? Thanks.

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