

THE MOST REVEILED LAW FIRM IN FLORIDA AND THE "UNOWNED MORTGAGE LOANS" SCHEME

By LYNN E. SZYMONIAK, ESQ. Editor, Fraud Digest
(www.frauddigest.com), AUGUST 1, 2010

In the last weekend in July, 2010, photographs of Florida lawyer David J. Stern appeared on the internet. Stern, the owner of the largest foreclosure law firm in Florida, was photographed sun-bathing on his 130' foot yacht, reportedly named "Su Casa es Mi Casa" (your house is my house). There were also photos alleged to be of Stern's 2008 black Bugatti Veyron, a \$1.85 million car and the most expensive street legal car. "Su Casa" is not Stern's only yacht. The Bugatti is not Stern's only sports car.ⁱ

Stern has likely profited more than most any other Florida lawyer from the nation's foreclosure crisis. The Law Offices of David J. Stern represent most major banks in foreclosures and bankruptcies. Stern's firm is one of the largest working for Lender Processing Services, Inc., the Jacksonville-based company that specializes in "default management." According to an article in the Tampa Tribune, the firm's revenues grew to \$260 million as a result of its foreclosure work.

In addition to his law firm, Stern also heads DJSP Enterprises, Inc., a publicly-traded corporation formed in early 2008.ⁱⁱ According to DJSP Enterprises, the company is the largest provider of processing servicesⁱⁱⁱ for the mortgage and real estate industries in Florida and one of the largest in the United States. "Processing services" sounds like a benign activity, but an examination of some of the documents prepared by Stern's businesses shows otherwise.

Stern employees regularly prepare and sign mortgage assignments to residential mortgage-backed trusts in cases where the trusts cannot produce the original assignments from the lenders to the trust. These documents are necessary for the trusts to prove that they have the right to foreclose.

These assignments must be signed by an officer or authorized representative of the bank or mortgage company that sold the mortgage to the trust or to the securities company that helped to make the trust. Stern's employees regularly sign as if they are such

mortgage company officers or officers of the registry service, Mortgage Electronic Registration Services ("MERS"), without disclosing that they are actually Stern's employees.

When Stern's employees sign these Mortgage Assignments, they routinely give false information about the date the trust acquired the mortgages. According to documents prepared by Stern, tens of thousands of mortgages (and the income from the promissory notes secured by the mortgages) went off the books of the previous owners in 2004, 2005 and 2006, went into the unknown, and then appeared on the books of mortgage-backed trusts in 2009 and 2010.

Chain-of-title is not just an issue for the buyers and sellers of particular homes and title insurance companies. Some entity – and most likely several entities – are claiming these mortgages and loans as assets when regulators and investors are determining solvency and compliance, but disavowing these same "assets" when acknowledgement of ownership would result in responsibilities ranging from payment of taxes to lawn mowing.

Stern employees often sign as if a bankrupt or out-of-business company or a failed bank owned the mortgage and loan up until foreclosure is imminent. In county recorders' offices across the state, the Stern-created records show that the trusts acquired mortgages and loans on dates when no such acquisitions ever took place. The trusts claim ownership solely to prove that they have the right to foreclose. The date selected is arbitrary – chosen by Stern or LPS or the mortgage servicing company. In reality, residential mortgage-backed trusts did not rush to acquire billions of dollars in sub-prime non-performing loans in 2008 and 2009 as these assignments falsely state.

No one has ever asked who paid the taxes on the income from these mortgages during the years of unknown ownership. Who claimed these mortgages and loans as assets on their financial statements in order to attract and keep investors? What mortgage servicing companies charged fees for "servicing" mortgages and loans that were "UNOWNED" for several years? What pension funds and investor groups paid fees to mortgage servicing companies to service "UNOWNED" loans?

Several judges in Brooklyn began asking a related question years ago.

In *Deutsche Bank National Trust Company v. Rose Harris*, Index No. 35549/07 Supreme Court of NY (Brooklyn) February 5, 2008, the Honorable Arthur Schack wrote: "Further, the Court requires an explanation from an officer of plaintiff DEUTSCHE BANK as to why, in the middle of our national subprime mortgage financial crisis, DEUTSCHE BANK would purchase a non-performing loan from INDYMAC..." In *HSBC Bank v. Valentin*, 21 Misc. 3d 1124 [A]: Judge Schack wrote:

Further, according to plaintiff's application, the default of defendants Valentin and Ruiz began with the nonpayment of principal and interest due on January 1, 2007. Yet, four months later, plaintiff HSBC was willing to take an assignment of the instant nonperforming loan. The Court wonders why HSBC would purchase a nonperforming loan, four months in arrears?

In *Wells Fargo v. Saint Aubin*, 2009 WL 311364 (N.Y. Sup.), Judge Schack noted:

The court needs to know if WELLS FARGO performed due diligence in purchasing this nonperforming loan or whether this was a device for FIRST FRANKLIN to shift its loss to the bondholders of plaintiff's mortgage loan trust, a collateralized debt obligation. Nobel Laureate Paul Krugman, in his July 2, 2007-*New York Times* column, "Just Say AAA," in writing about the subprime mortgage crisis, could have been alluding to FIRST FRANKLIN in the instant case...

Because of the structure of mortgage-backed trusts, it is impossible in most cases, without a subpoena, to identify the mortgages and loans that the trust supposedly owned and the date the trust actually acquired these assets. The weak laws regarding residential mortgage-backed trusts and the even weaker laws regarding mortgage assignments made a perfect storm for securities companies, mortgage servicing companies, banks acting as trustees and foreclosure law firms willing to do their bidding.

The Law Offices of David Stern became the leader in providing services – and documents.

Cheryl Samons, an office manager for the Law Offices of David Stern,

has signed more mortgage assignments than any other Stern employee. She has admitted in depositions that she has no personal knowledge of the facts recited on the mortgage assignments.

According to tens of thousands of mortgage assignments signed by Cheryl Samons and filed in county records throughout Florida:

- Wells Fargo Bank acquired thousands of mortgages from MERS in 2008, 2009 and 2010. According to these assignments, this is NOT MERS acting as a nominee for the previous lender - the grantor/previous owner is identified as "Mortgage Electronic Registration Services;"

- Deutsche Bank National Trust Company, as trustee for Trusts that closed in 2005 and 2006, acquired thousands of mortgages in 2008, 2009 and 2010 from MERS, including such acquisitions for:

Fremont Home Loan Trust, Series 2006-3;

Morgan Stanley ABS Capital 1, Inc. Trust 2006-HE4;

Morgan Stanley ABS Capital 1, Inc. Trust 2006-WMC2;

Morgan Stanley IXIS Real Estate Capital 1 Trust 2006-1;

Morgan Stanley Loan Trust 2006-HE2;

Morgan Stanley Loan Trust 2006-HE4

Morgan Stanley Loan Trust 2006-NC2;

Morgan Stanley Loan Trust 2007-1;

Morgan Stanley Loan Trust 2007-3;

Soundview Home Loan Trust 2006-3

- HSBC Bank, as trustee for Trusts that closed in 2005 and 2006, acquired thousands of mortgages in 2008, 2009 and 2010 from MERS including such acquisitions for:

SG Mortgage Securities Trust 2006-FRE1

- U.S. Bank, N.A., as trustee for Trusts that closed in 2005 and 2006, acquired thousands of mortgages in 2008, 2009 and 2010 from MERS, including such acquisitions for:

Bear Stearns Asset-Backed Securities 1 Trust 2006-IM1
MASTR Alternative Loan Trust 2006-HE1
MASTR Asset-Backed Securities Trust 2006-AB1;
MASTR Asset-Backed Securities Trust 2006-FRE1;
MASTR Asset-Backed Securities Trust 2006-FRE2;
MASTR Asset-Backed Securities Trust 2006-HE2;
MASTR Asset-Backed Securities Trust 2006-HE4;
SG Mortgage Securities Asset-Backed Certificates, Series 2006-FRE2
Structured Asset Investment Loan Trust 2006-4

Occasionally, Samons has forgotten to sign and date an Assignment, but her signature (i.e., the empty line) has nonetheless been witnessed and notarized by other Stern employees.^{iv} On other documents, Samons has signed over the signature line of Stern employee Beth Cerni and, again, the signature was nonetheless witnessed and notarized by other Stern employees.^v Samons has also signed for Stern notary Shannon Smith.

The problem with Stern's documents goes far beyond mortgage assignments. In 2008 and 2009, Stern's firm filed between 4,000 and 7,000 foreclosures in Florida each month. In thousands of cases, Stern filed these actions knowing that the banks he represented had no documents that gave the banks standing to foreclose.

Stern's lawyers claimed repeatedly that the bank, acting as trustee, owned the note and mortgage, had physical possession of the note and mortgage, and then mysteriously lost the note and mortgage. They filed these allegations knowing that they were false, but also knowing that the majority of homeowners in foreclosure would default.

In the cases where homeowners did object, Stern's lawyers then produced the assignments and necessary documents, often created by their own staff, using the title of MERS officers.

When the Florida Supreme Court amended the rules of civil procedure effective February 11, 2010, to require that all foreclosure complaints be verified, the Stern lawyers ignored the new rule and continued to

file hundreds of non-verified foreclosure complaints.

On July 26, 2010, a civil RICO class action lawsuit was filed against David Stern, individually, The Law Offices of David Stern, P.A. and MERSCORP. See, *Figueroa v. Merscorp, Inc., et al.*, Case No. 0:10-cv-61296-CMA, United States District Court, Southern District of Florida, Ft. Lauderdale Division. The lawsuit focuses on the fraudulent assignments signed by Cheryl Samons. The plaintiffs are represented by Fort Lauderdale attorney Kenneth Eric Trent.

The class action RICO lawsuit came just six days after David Stern, DJSP Enterprises and Kumar Ahaney were named as defendants in a class action lawsuit for violation of securities laws also filed in the Southern District of Florida. The securities' lawsuit seeks damages for investors who purchased stock in DJSP Enterprises between March 16, 2010 and May 27, 2010. The lawsuit alleges that DJSP Enterprises generates a significant amount of its revenue from flat fees earned within the first month of a referral and that any significant decrease in the number of referrals would materially and adversely affect its revenues. DJSP Enterprises experienced a substantial decrease in the number of referrals in April and May, 2010, but did not publicly disclose the substantial slowdown until May 27, 2010. When the substantial decrease in referrals was disclosed, the price per share of DJSP Enterprises fell from \$8.87 per share to \$6.33 per share, causing a substantial loss to shareholders.

Florida judges often take extraordinary measures to accommodate the Law Offices of David Stern. In thousands of cases, Stern's lawyers are allowed to appear telephonically. In Palm Beach County, all of Stern's cases are assigned to be heard in the same courtroom by the same judge so that the Stern lawyers do not have to travel from courtroom to courtroom. Stern's lawyers often fail to serve litigants with pleadings and documents prior to a hearing and instead reach into their briefcases at the hearing and deliver documents and pleadings at the moment of the hearing. Stern lawyers frequently "find" documents that were previously alleged to have been lost, with no questions asked by the Courts.

David J. Stern has amassed a fortune by providing documents and services to banks for foreclosures. The days of "anything goes" in foreclosures in Florida seem to be numbered, however, and banks may soon be required to account for the actions of the Stern employees.

ⁱ Stern's other autos include a 2010 silver Ferrari convertible, a 2009 red Ferrari coupe, a 2009 black Ferrari coupe, four Porsches, a 2010 white Cadillac Escalade, a 2011 Mercedes Benz coupe, a 2008 Bentley, a 2009 Rolls Royce, a 2008 Aston Martin Vantage, a 2007 Maserati Quattroporte, as well as BMWs, Hummers and Land Rovers.

ⁱⁱ Shares in DJSP Enterprises traded in January, 2010 for \$13.65; at the close of business of July 30, 2010, shares traded for \$3.73.

ⁱⁱⁱ According to DJSP materials: "The Company provides a wide range of processing services in connection with mortgages, mortgage defaults, title searches and abstracts, REO (bank-owned) properties, loan modifications, title insurance, loss mitigation, bankruptcy, related litigation and other services. The Company's principal customer is the Law Offices of David J. Stern, P.A., whose clients include all of the top 10 and 17 of the top 20 mortgage servicers in the United States, many of which have been customers of the Law Firm for more than 10 years. The Company has approximately 1,000 employees and is headquartered in Plantation, Florida, with additional operations in Louisville, Kentucky, and San Juan, Puerto Rico. The Company's U.S. operations are supported by a scalable, low-cost back office operation in Manila, the Philippines, that provides data entry and document preparation support for the U.S. operation."

^{iv} See File #3281725, Assignment of Mortgage of Ernesto Diaz, Saint Lucie County, Florida; see, also File # 107994571, Assignment of Mortgage, Andrea Sylvester, Broward County, Florida.

^v See File #3349080, Assignment of Mortgage of Neil Pettihomme, Saint Lucie County, Florida.