

Randy Neugebauer, TX, *Chairman*
House Financial Services Committee
Oversight and Investigations Subcommittee
U.S. House of Representatives
Washington, DC. 20515

Edward L. Fogg
Fogg Construction Company
Fogg Mortgage Company

Wednesday May 16, 2012

Written Testimony for Hearing entitled "Oversight of the Structured Transaction Program"

Dear Chairman Neugebauer and other Members of the Committee.

Thank you for allowing me to be here today.

I come to you today with my story of banking struggles which began with FDIC closure of the Bank of Clark County and continued on with other bank closures that have now created a cascade effect into all aspects of our Company's financial lives. As you can see from the resume that I provided, I am the owner of Fogg Construction Company since 1999, and have been a Mortgage Broker since 1992. I have owned Fogg Mortgage Company since 1995. I also have 27 rental units and a commercial building having been a landlord since 1995.

It has been 3 ½ exhausting years of constant work to attempt to keep things current. But, after trying to work things out personally and proactively, through legal counsel, attempting to get advice from Senators and our Congresswoman, it has led us to Chapter 11 bankruptcy.

I have heard Ms. Sheila Bair speak about the responsibility of the American public to make their mortgage payments and I can hold my head high in my community knowing that I have made every effort to keep those responsibilities. My integrity to honor the loans is on record.

Despite these struggles, I am a lucky man in that I still have a strong family, and a loving marriage which have unfortunately been the fall out for many other people in this situation. I still have a good reputation in the community since I have always paid my sub-contractors and completed my projects. I have kept all of my rental properties in excellent shape.

In the FDIC book, "Managing the Crisis" it is clear that the FDIC has recognized in the past the need to protect and not hurt communities by not cutting off credit to businesses and working with the local communities. I hope to see those values emphasized in their future actions.

Fogg Construction was forced to file Chapter 11 Bankruptcy May 3, 2012. The Mortgage Company and us personally will follow shortly.

Unfortunately, I have come to learn it is my only viable option. After 3 ½ years of trying to be proactive, keep my business and financial life solvent by communicating and working with banks and the FDIC, **I have found that there are no other options for those of us**

who attempted to do what our government has asked us to do in this very difficult recession; to do our fair share and pay our monthly obligations.

Throughout this entire process, I made sure to keep in communication with all my creditors; I provided suggestions and thousands of pages of documentation. I enlisted help from attorneys, and contacted our local representatives in attempt to find ways to proceed. I made payments even after balloon payments were due. Despite perfect payment histories, my credit was damaged and a snowball effect led me to my filing chapter 11.

FDIC and their structured partnership (Rialto / Lennar)

I believe The FDIC needs to recover as much money from each individual loan to reimburse the American tax payer from failed banks as possible. But, this should never be done by creating further additional economic problems in these communities.

Structured relationships should require the FDIC to be much more careful in selecting a long term structured partner than a standard loan sale. There needs to be well published guidelines on how a partner is to handle the work out process. The partner's goal should be to obtain the best results for the FDIC while not creating more harm to the American tax payer.

In this structured transaction the loans are primarily residential, land development and homes that were speculative in nature. Unfortunately, the private capital markets were paying very little for this type of asset thus giving life to the structured partnership by the FDIC.

Trouble from the start: Rialto / Lennar is given access to the majority of the Developers financial information from when the loan originated. This allows Rialto/ Lennar very privileged access to developer's assets and project information with their direct competition in the home building arena.

Private companies would not be able to obtain the non-recourse, favorable terms in financing provided by the FDIC to the Rialto / Lennar partnership. Their agreement creates little pressure for Rialto to come to any agreement or negotiate quickly with borrowers and come to a favorable resolution for all parties involved.

Also with Rialto / Lennar, it really gives them little incentive to want to see their competition work through the problem loans. If so, is there any incentive for Rialto to work with a borrower of a failed bank? And, If so, could this information become public?

A place for Rialto / Lennar in today's market place

If Rialto / Lennar are given a portfolio of Bank owned REO properties and the goal is to market or develop them and also get the American tax payer back as much as possible, they would be an excellent partner. But this structured partnership does not allow Lennar to purchase or acquire the land for development.

Our Story:

Bank of Clark County

Our problems began when I was approached by the Bank of Clark County. Specifically, Mike Worthy and the CFO David Kennelly about taking out a loan to purchase some distressed property that was held by the bank. The Bank of Clark County asked me to purchase five properties for the development of rental homes to help the bank turn some negative assets into more positive assets.

In October 2008 all 5 lots, and 2 permits were purchased. We started 2 foundations, framed and roofed the first 2 homes. On December 24 Christmas Eve 2008, we closed on 2 more additional construction loans.

The Bank was seized on Jan 16, 2009 just 23 days after securing the second round of financing. Fogg Construction received a portion of the money available under the construction loan agreements from the Bank of Clark County for the initial phases of building of the five rental homes.

We were entitled to receive the remainder of the funds on the loans that would pay the subcontractors to finish the project. For some reason, after the bank was seized, the FDIC was not required to provide the remaining loan funding. Yet the partial amount lent by the Bank of Clark County remained due by Fogg Construction to the FDIC. We learned that the FDIC repudiated our loans with a simple form letter received in the mail.

The week following the bank closure, as an armed security guard watched, I had a meeting with James Colton from Quantum and Kelly Dixon formally of the Bank of Clark County. They told me that bad things happen to good people and to do what it takes to hold my family together during this tough time. I was asked to come up with a business plan to work out my current loans and to provide updated financials.

Our file was turned over to a representative of the FDIC from Quantum Jerry Schlife. Within a week of the request, I submitted a detailed business plan for the construction project with a line-item budget and bids to support it. I provided a complete set of financials. The plan I proposed was to complete 4 homes in the project within the budget provided, with lien releases from all subcontractors showing proof of payment. The FDIC would not have to provide me with construction draws, but only fund approximately 75% of the originally committed loan amount upon completion. Mr. Jerry Schlife told me it was one of the best business plans he had ever had presented and would be getting the pending approval but not to worry.

I held up my end of the bargain. Paid and completed the entire project in record time with every penny we could scrape up, beg for and borrow at higher rates. I kept in contact with Jerry Schlife throughout the construction phase, but when I returned with the signed lien releases, he told me he was sorry but someone up the food chain said it was a bad investment for the FDIC.

At that point, I was shorted \$650,000.00

Lot 7 – Received approximately \$135,000.00 of \$285,000.00 loan – Shortage of \$150,000.00

Lot 10- Received approximately \$115,000.00 of \$285,000.00 loan- Shortage of \$150,000.00

Lot 3 – Received approximately \$115,000.00 of \$285,000.00 loan – Shortage of \$175,000.00

Lot 4 – Received approximately \$115,000.00 of \$285,000.00 loan – Shortage of \$175,000.00

Also, a \$90,000.00 land loan that had no access to construction funds.

Lot 17 of Zachary's Landing

Fogg Construction built this home in 2008, and we were due to sign extension documents to extend the loan to some reasonable period of time for the real estate market to work itself out. We received a last minute email the very day the Bank of Clark County was seized to come sign the paperwork but we were unable to re-arrange our schedule that day.

We owe \$242,000 on this property. After the bank failure, we received an all cash offer of approximately \$175,000.00 to purchase the home. Mr. Schlife indicated he would submit the file to the FDIC for approval. He indicated that the file had made it through the many layers of the approval process, but was denied as the loan was sold in a structured transaction. As Mr. Schlife was leaving for another assignment, the FDIC prepaid a one year extension of the note for Lot 17 to help us work with the future purchaser of the note.

FDIC and Rialto

The FDIC transferred the Bank of Clark County loans on the 5 properties to Rialto. Rialto (or MultiBank) hired a servicing company, Quantum; they were in charge of the loans at this point.

Once the transfer occurred we were surprised at the lack of billing statements. We contacted Quantum directly and were told that according to their records we didn't need to make payments until 2013 and not to send a payment until their computer system was corrected.

We continued to send certified payments on all 5 separate loans requesting separate return receipts on each loan. We kept copies of the checks each month. Months would go by without any statements, and then only one or two of the loan statements would come sporadically.

Because of this we were required to calculate our own payments for about a year and a half. Our contact at Rialto at the time was James Tapscot. He told us on several occasions that we were in default on all of our loans and we would have to come up with proof that we made all the payments. He would say that Rialto was going to sue me and my wife and take anything and everything that we have.

When we showed Rialto the copy of the extension issued by the FDIC for Lot 17, they said that they had no record of it and that it was invalid since our copy was not a signed copy. They actually verbally accused me of faking the document.

At this point we obtained legal counsel to help us work with Rialto. Rialto eventually acknowledged that the note on lot 17 had been extended by the FDIC, but they did not have a copy.

Our attorney Scott Anders had a number of deals agreed to in principle with Rialto, but every time he thought the deal was done, they would raise a fee, the rate (or both), or shorten the term.

They finally offered a 1 ½ year extension to our loan at approx 8% with a \$10,000.00 loan fee (which equals 4 points). **This works out to an APR of 38.376%**. We had been working on this process with and without a lawyer for about a year and a half, therefore, a year and

a half extension would only make us have to re-start working on the next extension as soon as it was finalized.

As a mortgage broker, this offer, with such high fees, would be considered predatory lending if I were to offer it to one of my mortgage clients. Accepting it would not be a solution, only an extension of our current problem.

The loss of liquidity due to self-funding this construction project and the inability to work out a solution with the FDIC and Rialto caused us to lose a HUD project that was in its last stages of approval. It was a project to build 65 rental houses and would have employed over 200 people for up to 2 years in Clark County. These jobs would have been construction workers and suppliers who were the hardest hit by the economic downturn in our area.

Failure of Frontier and FDIC appointment of Union Bank

Other bank failures overseen by the FDIC have affected our family as well and caused loans to fall into the no-man's land of refinance or modification. We constructed 2 homes in 2006 for rental properties using the Bank of Salem that was later acquired by Frontier Bank.

We finished these homes in 2007 when the bottom started falling out of the mortgage security market. We were unable to get a lender to fund a long-term takeout loan even though we had a strong track record, perfect credit history, verifiable income and a long history of being landlords.

We worked with Frontier Bank to come up with a solution. They asked us to attempt to sell the homes or to look at lease option to purchase clients to rent the homes.

We went on to sell both homes on lease option to purchase:

Lot 1 Mary's Circle: We sold the home to husband and wife with four daughters. They had a few credit issues that could be worked out in the time of the lease option. Both had good jobs and wanted to purchase the home.

Over a year into the contract, the husband was deployed to Iraq. The stress of raising 4 children on her own with her husband deployed overseas in a War was very trying. She came to us asking to get out of the contract; she needed to be closer to her family to help raise her children.

Lot 3 Mary's Circle: We entered into a lease-to-purchase contract with a husband and wife that had transferred from the Midwest. The Future borrowers were in the end of a Chapter 13 Bankruptcy. They applied for a loan through Frontier Bank as their lease-to-purchase agreement was ending.

They were ultimately declined because they paid off their chapter 13 bankruptcy off a few months early which did not meet the terms of the Chapter 13. The wife was diagnosed with Breast cancer so they left the contract and moved back to the Midwest.

We kept the loans current and continued to rent these properties and communicate with the bank regarding ways to refinance the loan before it came due, however, the bank failed and Union Bank was appointed as receiver. We attempted to work with staff at Union regarding our loan problems. We had the 2 Mary's Circle loans in our personal name but

also 2 loans in the name of Fogg Construction that needed to be addressed within the next few years that were now owned by Union bank.

We were assigned to a special asset loan officer Patrick Baker for both the personal loans and the Fogg Construction loans. Eventually our personal loans were assigned to Nancy Boyd of Union Bank San Diego office.

She told us that they had to adhere to the FDIC's mandates but that there may be something she could submit within the FDIC's framework. We supplied thousands of pages of paperwork, taxes, financials, resumes, bank statements, we proved every tenant payment of rent/deposit. A year went by. Even after inquiring we were never told what we were applying for but continued to provide the supporting documentation.

Our loan had come due but we continued to supply payments directly to our contact Patrick Baker. We began to contact our local Senators and Congresswoman's offices. The Office of the President at Union Bank assured Patty Murray and Maria Cantwell's office that they would be working with us and would have a timely resolution in the future. However, soon after, despite making payments, Union bank reported over 13 missed mortgages on our credit report. We discovered this after receiving a letter saying that our company credit line would be frozen and payments increased.

The office of the President of Union Bank immediately held a conference call with us and sent us a letter stating that our credit would be corrected, but the damage was done. A few months later, Union Bank, again reported the delinquencies despite receiving payments.

We inquired with Patrick Baker on how to manage the 2 loans in the Construction Company's name but they only wanted to work on the two loans in our personal name for some reason. We were told that the Union Bank staff and the FDIC said that we were nothing but a complainer and a letter writer.

Patrick Baker, I believe, was an advocate for us and wanted to attempt to work something out, but he was let go from the company. After his release, we were never provided a replacement contact, and after a few months of no contact a formal decline letter was sent to the wrong address. A post office box that has never been a personal or company address for us but someone we know.

This person who owns the post office box delivered it to us personally. Union Bank continues to send statements to that address. As I have said before, we sent thousands of pages of paperwork to them at their request for over a year, and they do not know our address. So how much effort could they really have put into finding a solution for us, if they cannot even get our address correct?

Unsecure lines of credit

Situs companies and our unsecured credit lines, these lines of credit were not sold to any other bank and had been managed by Situs companies for the FDIC after the seizure of the Bank of Clark County. After working for approx. 2 years with Situs to come up with a solution to settle these debts, Situs and I came to a resolution.

They said they would send me the official paperwork in the next few weeks. However, at that point, they stopped all contact for approximately one year. By the time they contacted us again, the damage was done from Union Bank's late reporting of mortgage credit. The loans were then sold to Key Bank, and then sold immediately to WM Partners who's in the process of suing us. This too will now be settled through the chapter 11.

I am simply an average citizen. I pay my bills. I keep my obligations. After all that I have learned, there are still some serious questions that are unanswered:

- How can it be that a person has a contract that has to be held up and honored, but the FDIC or its private sector partner Rialto can walk away from their end of the contractual obligation?
- Within the partnership with the FDIC, Is there any incentive in place for Rialto to work out solutions with the consumer or is there a greater incentive within their agreement to liquidate and sue the borrower at any cost?
- I don't understand why there are contracted representatives of the FDIC available after a Bank take-over who can request your time and request that we present a business plan but they are unable to render a decision or tell you what you are applying for. What purpose does that serve?
- The FDIC has documented in the past that their goal is not to ruin communities and small businesses. Is that still in place? And if not, when did those policies change?

I thank you for your time and attention.

Sincerely,

Ed Fogg
Fogg Construction / Fogg Mortgage

Attachments

- A) Lot 17 extension. Bank asking us to sign for an extension 2 hours before FDIC seized Bank of Clark County
- B) Email between Ed Fogg and Jerry Schlife the contract employee of FDIC after Bank of Clark County seized. Shows actively trying to sell Lot 17
- C) Emails between us and Rialto showing their lack of accounting regarding payment history
- D) Email Correspondence between our attorney and Rialto's attorney
- E) Email from Rialto representative regarding our payments and responding to Congresswoman Jaime Herrera Beutler's input
- F) A letter from Ed Fogg to Ms Larue of the FDIC explaining our situation. She indicated she worked in managing and monitoring the structured sales of the FDIC
- G) A letter from Ed Fogg to Sheila Bair explaining our situation and possible affect on multiple banks.
- H) Letter from Union Bank responding to Senator Patty Murray's office and letter to us from Patty Murray's office relaying that they were told Union Bank would have a resolution
- I) Letter to us from Union Bank after they reported delinquencies on our credit stating that we had made all of our payments and they would correct the mistake. Another letter stating that we had made all of our payments after Union Bank reported against our credit report for a second time
- J) Email between Ed Fogg and Patrick Baker – Special Assets Loan Officer September 2011 showing no response regarding our re-finance at that point

Ed Fogg

From: Kelley Dixon [KelleyD@bcc.com]
Sent: Friday, January 16, 2009 4:02 PM
To: Ed Fogg
Subject: Docs are ready for you to sign.

A

Kelley Dixon

ASSISTANT VICE PRESIDENT
RESIDENTIAL CONSTRUCTION & DEVELOPMENT
1307 COLUMBIA STREET
P.O. BOX 61725
VANCOUVER, WA 98666-1725
PHONE: 360-906-9518
FAX: 360-735-0318
www.bccc.com



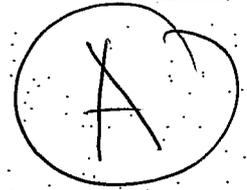
Bank was shut down
2 hrs LATER.

SE

A

Ed Fogg

From: Kelley Dixon [KelleyD@bcc.com]
Sent: Monday, January 05, 2009 12:04 PM
To: Ed Fogg
Subject: RE: Lot 17



Thanks Ed, I will see what I can do to extend this out.

Kelley Dixon
ASSISTANT VICE PRESIDENT
RESIDENTIAL CONSTRUCTION & DEVELOPMENT
1307 COLUMBIA STREET
P.O. BOX 61725
VANCOUVER, WA 98666-1725
PHONE: 360-906-9518
FAX: 360-735-0318
www.bocc.com



From: Ed Fogg [mailto:ed@foggmortgage.com]
Sent: Monday, January 05, 2009 11:35 AM
To: Kelley Dixon
Subject: FW: Lot 17

The sales in the area have basically shut down as I figure you are aware of. I rented the house to a guy that is a perfect example of what is going on.

Money in the bank, good job, perfect credit but does not want to buy at this point. I wish things were different.

I will forward you the information.

Thank you

Ed Fogg

From: Ed Fogg [mailto:ed@foggmortgage.com]
Sent: Monday, September 15, 2008 8:42 AM
To: 'Kelley Dixon'
Subject: FW: Lot 17

From: Kelley Dixon [mailto:KelleyD@bcc.com]
Sent: Friday, September 12, 2008 9:55 AM
To: Ed Fogg
Subject: Lot 17

Hi Ed,

Just following up to my email earlier in the week regarding Lot 17. Do you have the house sold or rented?
I will need to do something with it before month end.

Any word on your updated financial info?

Thanks Ed, talk to you soon.

A

Kelley Dixon

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Ed Fogg

From: Jerry Schlife [jschlife@qfinancial.com]
Sent: Monday, December 07, 2009 3:07 PM
To: Ed Fogg
Subject: RE: Lot 17

(B)

I'll write the case at \$176,000 gross. Need the counter to the contract I have, and an up dated HUD.

Jerry Schlife
Asset Servicing Professional/Quantum Joint Venture
FDIC as Receiver for Bank of Clark County
Phone: (360) 713-6421
E-mail: jschlife@qfinancial.com

-----Original Message-----

From: Ed Fogg [<mailto:ed@foggmortgage.com>]
Sent: Mon 12/7/2009 4:08 PM
To: Jerry Schlife
Subject: Lot 17

I just got a verbal from buyer that they will go up \$6,000 grand, but I do not have it in writing until tomorrow best case.

Total would be \$176,000 all other items remain the same. I have not been able to get a hold of Borrowers loan officer for a updated letter of approval.

So this is where we are at.

Going to doctor's appointment and do not expect to receive anything in writing until we get your verbal.

Thank you

Ed Fogg

503 705 4589 phone

Ed Fogg

From: Jerry Schlife [jschlife@qfinancial.com]
Sent: Friday, December 18, 2009 9:05 AM
To: Ed Fogg
Subject: RE: lot 17

3

Actually, the case has made it all the way to Irvine. I'm expecting an answer possibly as early as Monday.

Jerry Schlife
Asset Servicing Professional/Quantum Joint Venture
FDIC as Receiver for Bank of Clark County
Phone: (360) 713-6421
E-mail: jschlife@qfinancial.com

-----Original Message-----

From: Ed Fogg [<mailto:ed@foggmortgage.com>]
Sent: Fri 12/18/2009 10:57 AM
To: Jerry Schlife
Subject: lot 17

Realtor indicated the borrower will be out of town through the holidays.

>From my notes you thought the FDIC would meet on this file around Christmas.

Thank you

Ed Fogg

email # 2

Ed Fogg



From: James Tapscott [james.tapscott@rialtocapital.com]
Sent: Wednesday, December 29, 2010 2:39 PM
To: Ed Fogg
Subject: Updated Pay History
Attachments: Fogg Construction Updated Pay History.pdf; Addendum to Agreement dated November15.pdf

Ed,

I just received the attached updated pay history from Quantum. Most importantly, it includes payments posted 12/27/2010 for two loans. Please use this when reconciling with your checking account and get back to me to discuss when complete.

In addition, I've attached the Addendum to the Pre-Negotiation Agreement which I think I previously sent to you and have not received back. I need this signed and returned before we can further discuss your loans.

Please also include a current Personal Financial Statement and Current Financial Statement for Fogg Construction, Inc.

Finally, you mentioned that you did not file a tax return for 2009. Please send me an e-mail confirming this statement.

Please provide me with the requested documents and get back to me once you have reconciled your loan payments against our records.

Jim

* Spreadsheets

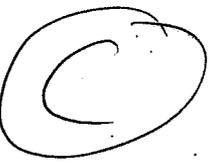


Property:
Quantum Loan #
FDIC Loan #

Date	Payments	Payments	Payments	Payments	Payments
5/24/2010	\$ 865.71	\$ 661.98	\$ 575.36	\$ 575.91	\$ 652.31
6/14/2010	\$ 865.71	\$ 671.17	\$ 583.35	\$ 583.91	\$ 661.37
6/24/2010	\$ 814.80				
7/19/2010	\$ 1,273.11	\$ 676.15	\$ 580.48	\$ 583.91	\$ 661.37
8/19/2010	\$ 1,273.11	\$ 676.15	\$ 583.35	\$ 583.91	\$ 661.37
9/13/2010	\$ 1,290.79	\$ 661.37	\$ 583.91		
9/14/2010					
10/18/2010	\$ 1,273.11	\$ 676.15	\$ 583.35	\$ 583.91	\$ 661.37
11/22/2010	\$ 1,273.11	\$ 676.15	\$ 583.35	\$ 583.91	\$ 661.37
12/27/2010	\$	\$ 676.15	\$ 583.35	\$ 583.91	\$ 661.37

First Spreadsheet provided by Mr Tapscott. It shows erroneous amounts paid which we corrected for him by providing the cancelled checks. It also showed missed payments which we corrected by showing him the cancelled checks.

* Spreadsheets



7000054408		7000054705		7000054747		7000054754		7000054713	
Date received	Amount	Date received	Amount	Date received	Amount	Date received	Amount	Date received	Amount
24-May	865.71	24-May	661.98	24-May	575.36	24-May	575.91	24-May	652.31
14-Jun	865.71	14-Jun	671.17	14-Jun	583.35	14-Jun	583.91	14-Jun	661.37
24-Jun	814.8	19-Jul	676.15	19-Jul	583.35	19-Jul	583.91	19-Jul	661.37
19-Jul	1273.11	19-Aug	676.15	19-Aug	583.35	19-Aug	583.91	19-Aug	661.37
19-Aug	1273.11	13-Sep	661.37	13-Sep	583.91	14-Sep	583.91	14-Sep	661.37
13-Sep	1290.79	18-Oct	676.15	18-Oct	583.35	18-Oct	583.91	18-Oct	661.37
18-Oct	1273.11	22-Nov	676.15	22-Nov	583.35	22-Nov	583.91	22-Nov	661.37
22-Nov	1273.11	27-Dec	676.15					27-Dec	661.37
27-Dec	1273.11								

Second Spreadsheet with the corrections we provided for him.
 The payments that are still showing missing were at Quantum
 Servicing at the time. They had not put them through. They
 suddenly cleared the bank the next day.

* Spread sheets

Ed Fogg

(D)

From: Anders, Scott [scott.anders@bullivant.com]
Sent: Sunday, March 27, 2011 9:56 AM
To: Kosydar, Christine
Subject: RE: Rialto/Fogg

Christine:
I think it is clear why the continuance was requested. First, I will not even return to town until April 9, a Saturday. Second, Mr. Fogg is in the process of trying to refinance all of his loans involving Rialto. The process is under consideration with a financial institution as we speak. I do not think that qualifies as "contemplating who knows what now."

Mr. Fogg wants as little to do with Rialto/Multibank as possible thus the application through another financial institution. It's not as if Rialto has been some great outfit to work with. Quite frankly Rialto has broken several agreements and so their representations leave much to be desired. My client would prefer to never have to deal with them again.

As for my being out of town it is something that I have planned for quite some time with my daughter.

I respectfully request reconsideration of the continuance decision. By the time I return Mr. Fogg should have an answer from the financial institution that is considering his application. I do not see how a planned, agreed to delay will cost anything additional. It will require no action on the part of you or your client.

Should my client not accept by 10 am on April 12 then the offer is done whether by a negative response or no response. If he does choose to accept the offer then it gives him time to make the arrangements with me for the deposit upon my return to the office.

Regards,
Scott S. Anders

Scott S. Anders | Attorney
Bullivant Houser Bailey PC | 805 Broadway St. | Suite 400 | Vancouver, WA 98660-3310
T 360.737.2308 | F 360.695.8504 | [Bio](#) | [Email](#) | [Website](#)
Seattle . Vancouver . Portland . San Francisco . Las Vegas

From: Kosydar, Christine [mailto:CAKOSYDAR@stoel.com]
Sent: Friday, March 25, 2011 7:11 PM
To: Anders, Scott; Friedman, Todd L.
Cc: Friedman, Todd L.
Subject: RE: Rialto/Fogg

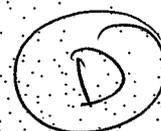
Scott:

This is not acceptable. We spoke weeks ago about these issues and it was left with you to advise if your client wanted to settle this along the lines we discussed, where he provides a \$5,000 retainer. The ball has been in his court for weeks. We followed up with you on March 10 and the excuse at that time was that the father-in-law was in surgery but you would respond by March 14. We heard nothing, however, so we followed up again, and this time you want another 2 weeks to contemplate, who knows what now.

It isn't that hard. We have drafted the agreement, and the only issue is whether your client is going to pay for this as required or not with a \$5,000 retainer. The excuses are over. Time is up. Your client can pay the \$5,000 by Tuesday

noon, or negotiations may well be over and my client may choose to proceed. I must also add that the delays require follow up and this in turn erodes the \$5,000 retainer.

Regards,
Chris



Christine A. Kosydar | Partner
STOEL RIVES LLP | 900 SW Fifth Ave, Suite 2600 | Portland, OR 97204-1268
Direct: (503) 294-9533 | Fax: (503) 220-2480
ckosydar@stoel.com | www.stoel.com

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From: Anders, Scott [mailto:scott.anders@bullivant.com]
Sent: Friday, March 25, 2011 12:30 PM
To: Friedman, Todd L.
Cc: Kosydar, Christine
Subject: RE: Rialto/Fogg

Todd,
I have been out at meetings since yesterday afternoon and just received your e-mail and voice mail. First, I request an extension on behalf of my client for the deadline due to certain circumstances. I will be out of town and not available by phone or e-mail for the bulk of the next two weeks. I will be back in the office on April 11 and so would request an extension until the 12th of April. The other reason is because my client is in the process of a refinance with a financial institution. The process is well under way but it will take some extra time for the financial institution to give Mr. Fogg a decision.

I do have a question about the interest rate as well. My understanding from my previous discussions with Rialto was that the rate was 6.25%. Rialto said they were extending the terms under the existing conditions. Can you tell me how they arrived at 7.5%? It may be correct but I need to make sure for my client.

Sincerely,
Scott S. Anders

Scott S. Anders | Attorney
Bullivant Houser Bailey PC | 805 Broadway St. | Suite 400 | Vancouver, WA 98660-3310
T 360.737.2308 | F 360.695.8504 | [Bio](#) | [Email](#) | [Website](#)
Seattle . Vancouver . Portland . San Francisco . Las Vegas

From: Friedman, Todd L. [mailto:TLFRIEDMAN@stoel.com]
Sent: Thursday, March 24, 2011 3:51 PM
To: Anders, Scott
Cc: Kosydar, Christine
Subject: Rialto/Fogg

Scott,
To follow up on my voicemail from earlier today, please note the following:

- 1) Per your proposal, interest at the 7.5% per annum rate will accrue as of 1/12/11
- 2) The first payment under the modified terms will be due on the 10th of the month

emails # 3

Ed Fogg

From: Jon Levy [jonathan.levy@rialtocapital.com]
Sent: Monday, August 29, 2011 4:23 PM
To: Ed Fogg
Cc: michael.yaffe@rialtocapital.com; Leo Abaunza
Subject: RE: Fogg info for your review



Ed, I am now the asset manager for this loan relationship.

In order to minimize any confusion, all further communication should be directed solely to me.

Jonathan

On Aug 29, 2011 7:18 PM, "Ed Fogg" <ed@foggmortgage.com> wrote:

> You have the copies of the letters as attachment in the last email.

>

> Ed Fogg

>

> -----Original Message-----

> From: michael.yaffe@rialtocapital.com

> [mailto:michael.yaffe@rialtocapital.com]

> Sent: Monday, August 29, 2011 4:02 PM

> To: Ed Fogg; Jonathan Levy

> Subject: Re: Fogg info for your review

>

> The senator isn't your lender or servicer. He wouldn't know when the
> payments were received or when they cleared. Please send his letter you are
> describing. You are in maturity default.

>

> Best,

> Michael

> Sent from my Verizon Wireless BlackBerry

>

> -----Original Message-----

> From: "Ed Fogg" <ed@foggmortgage.com>

> Date: Mon, 29 Aug 2011 15:43:37

> To: 'Jonathan Levy' <jonathan.levy@rialtocapital.com>

> Cc: <leo.abaunza@rialtocapital.com>; <michael.yaffe@rialtocapital.com>

> Subject: Fogg info for your review

>

> Letter from Senator that indicates all payment applied correctly

>

> Letter the same day from Quantum that indicates I am in default on all my
> loans. (received the same day as Senator letter)

>

> Postal receipts for the July payments. (Once again the loan servicer has
> never sent us a payment coupon)

>

> Thank you



F

FDIC
Mrs. Larue
Dallas, Texas
March 28, 2011

RE: Fogg Construction
Loan numbers

Thank you for taking the time to speak with me on Friday regarding our situation that was created from the failure of Bank of Clark County, Jan. 16th, 2009.

During this time we have done what the government has asked every American to do, we have keep up our monthly payments, keep our properties from further devaluing, worked tirelessly to create opportunities for ourselves and others.

History:

We were asked by the BOCC to purchase land and obtain construction loans for rental properties in Sept 08. We have fair number of rentals and have proven to be good property managers, so the loan officer and chief credit officer approached us about purchasing lots for rentals. We knew the bank was in trouble but was assured by all at the bank, that if the Bank was sold or closed our 5 year construction loans would be honored by the new institution, we had never been told about the term repudiation.

We closed on the land in late Oct with 2 construction loans, then we closed on 2 additional construction loans Christmas Eve 2008. (The bank failed Jan 16th.) We had a 5th loan with FDIC that was for \$90,000 and we found a buyer for the lot at \$60,000 and was 1099 for the difference in income.

At the point of closing the bank we had basically just started the homes and had aprox \$620,000 remaining to be drawn out to complete the project.

We worked with the FDIC contractor to come up with a solution to potentially finish the houses / we did finish them with basically every penny we could scrape up, beg for and borrow at higher rates.

During this period, we had loans that other institutions worked out to positive outcomes, and we have had a loan come due with Frontier / Union Bank come due, and with the help of Patrick Baker, special assets LO with Frontier, we are on the verge of an acceptable solution.

Problems as of today:

Loan on Lot 17 of Zachary's landing: This property was built as a spec home, then upon advice from the bank turned into a rental. We had negotiated with the bank a long term refinance (see email s #1)

The loan for Lot 17 came due January of this year and the loan is for more than the value of the home by approximately \$40,000 - \$60,000. When the FDIC was still with the Bank of Clark County we had an offer of aprox the value of what it is today. (see email #2)

F

For some reason it was not accepted at the time. We thought we had actually worked out deals on all of the FDIC loans but for one reason or another, the contractor indicated he did not have the time to complete the transaction and work with the new owners of the loans.

Problems with Rialto

Loans have been with Rialto since March 2010, during this period of time we have never received an accurate billing statement, the Servicer Quantum, I think, has stopped sending them out in general. They have threatened us with lawsuits, they tell me we are going to take everything we have, and they have been unwilling to compromise to maximize the best possible outcome for all parties. * See Spreadsheets

We have good credit, but there is basically no secondary market for mortgage lending for real estate investors with more than 10 properties. We have attempted to sell properties with no luck; Rialto indicates they have zero options to work with us. We are trying to find solutions but they keep threatening us.

See email received from Rialto attorney (email #3).

In our conversation with you regarding the FDIC and these loans, you indicated that the manager gets to make the call as a business decision on that property. When you said this, I totally agree with your statement.

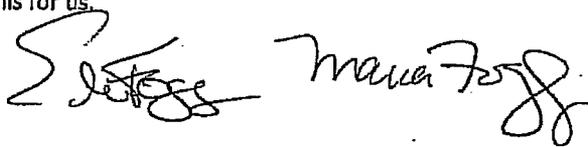
As a business decision to protect my family, we are forced to look at chapter 11, all-the-while having perfect credit. Even after being shorted \$620,000 from the bank failure.

Rialto will create a tidal wave of problems for other institutions, as they will be caught up in the fall out. Bank of America, Wells Fargo, Union Bank, US Bank, (small banks) Washington Federal, Pacific West, Riverview Savings Bank. Our goal would be to keep everything we have.

I think the goal of all parties involved should be to attempt to make the situation better not worse and to improve, not worsen the economy. I understand that Rialto's only function in life is to make as much money as they can, but the FDIC as a partner in the transaction, should be looking out for the American public above and beyond all else.

Thank you for looking into this for us.

Ed & Maria Fogg
6405 NE 116th Ave, #103
Vancouver, WA 98662



503 705 4589 mobile
360 882 4776 office
ed@foggmortgage.com
866 667 8768 fax

(G7)

Ms. Sheila Bair
Chairman
FDIC
550 17th Street NW
Washington, DC 20429

EMAILED TO
MARIA GONDELVELL
OFFICE

3/31/2011

Sent to Kim Moore (K. Moore)
NHHB 3/31/11

- RE: Ed & Maria Fogg
- RE: Fogg Construction
- RE: Rialto Capital Management
- RE: Closing of the Bank of Clark County

Dear; Ms. Sheila Bair,

I first want to say that our story is not one you have heard a thousand times before. We have never missed a payment, never, not-paid a sub contractor, and never not-completed a project.

We have heard you speak about the responsibility of the American public to make their mortgage payments. And we have done exactly what you have asked every American to do; we have made every mortgage payment.

So today my wife and I can still hold our heads high in our community and as it appears that we will be doing this in the courts sooner than later. As now with the way the Bank of Clark County was closed and the loans sold off to Rialto Capital Management. They have threatened us with Foreclosure on homes, even when the payments have been always been made. They are threatening us with lawsuits.

We are (what I assume) to the FDIC, statistically insignificant, and the unfortunate fall-out from the closing of a bad Bank. Our loans were repudiated, our projects were completed out of pocket, and we have been able to rent all the properties and not sell a single one.

The FDIC has lost by not working with us; we stand to potentially lose everything.

We understand that it always comes down to a business decision, but your partner's business decisions will not help the economy or monetary outcome for your organization and will ultimately hurt many more financial institutions.

In the FDIC book, 'Managing the Crisis', it is very clear that the FDIC recognized the need not to hurt communities by not cutting off credit to businesses and working with the local communities. I would like you to re-read that book to understand the importance of helping entrepreneurs as they are the backbone of the communities for economic opportunities.

(G7)

I am writing this letter to you as my wife completes the paperwork for an attorney to evaluate what is the best outcome of a chapter 11 or chapter 13 bankruptcy. It seems odd to us to be forced down this path when we have good credit and have never missed a payment on any of our obligations. We have always felt morally obligated to our responsibilities and have worked tirelessly for several years now, but have come to the realization that we are going to have to educate ourselves and possibly pursue bankruptcy. All from the process of the government closing a Bad Bank, that we had no way of knowing.

What do I tell my children about right and wrong, as this will ultimately have a large impact on their lives?

I am attaching documentation that will substantiate my story for your review.

I hope you actually take the time to read this and the following documentation.

Sincerely

Ed Fogg

15609 SE Rivershore Drive
Vancouver, WA 98683

503 705 4589

CC: Senator Patty Murray
1323 Officer's Row
Vancouver, Washington 98661

CC: Senator Maria Cantwell
Marshall House
1313 Officers Row
Vancouver, WA 98661

CC: Congresswoman Jaime Herrera-Beutler
750 Anderson Street, Suite B
Vancouver, WA 98661



HI

Received

NOV - 3 2010

October 27, 2010

Representative David Hodges
SW Washington Representative
1323 Officer's Row
Vancouver, WA 98661

Dear Representative Hodges:

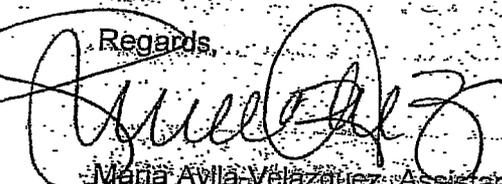
Union Bank is in receipt of your letter dated September 15, 2010 to Mr. Pat Sahey, Pacific Northwest Chairman, which was received on September 22, 2010. Attached to your letter were copies of letters which Ed and Maria Fogg sent to Senator Patty Murray and Senator Maria Cantwell. I am responding to you on behalf of the Office of the President. Thank you for your patience while waiting for a response.

The Office of the President wishes to advise you that Union Bank is working diligently with Mr. and Mrs. Fogg to address their concerns. Mr. and Mrs. Fogg have expressed their gratitude to the Bank for its responsiveness to their concerns.

Thank you, Representative Hodges, for your interest in our client's concerns. We appreciate the opportunity to respond to your letter.

Please do not hesitate to contact me should you have any questions on this matter at 714-985-2603.

Regards,



Maria Avila Velazquez, Assistant Vice President
Office of the President/Customer Care
Union Bank, N.A.



United States Senate

WASHINGTON, DC 20510-4704

COMMITTEES:
APPROPRIATIONS
BUDGET
HEALTH, EDUCATION, LABOR,
AND PENSIONS
RULES AND ADMINISTRATION
VETERANS' AFFAIRS

November 8, 2010



Ed and Maria Fogg
Fogg Construction Inc.
6405 NE 116th AVE #103
Vancouver, Washington 98662

Dear Ed and Maria:

Enclosed please find an interim response my office received in response to my inquiry on your behalf to Union Bank. As you can see, they are still working on the issue and have assured me that they will have a timely resolution in the near future.

If you have any questions or concerns please don't hesitate to contact David Hodges in my Southwest Washington office at (360) 696-7797.

Sincerely,

Patty Murray
Patty Murray
United States Senator

PM/dh

RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510-4704
2621

1811-116TH AVENUE, NE
SUITE 214
BELLEVUE, WA 98004-3045
(425) 462-4480

2930 WETMORE AVENUE
SUITE 903
EVERETT, WA 98201-4107
(425) 259-6515

2988 JACKSON FEDERAL BUILDING
915 2ND AVENUE
SEATTLE, WA 98174-1003
(206) 553-5545
TOLL FREE: (866) 481-9186

601 WEST MAIN AVENUE
SUITE 802
SPOKANE, WA 99201-0613
(509) 624-9515

950 PACIFIC AVENUE
SUITE 650
TACOMA, WA 98402-4450
(253) 572-3636

MARSHALL HOUSE
OFFICER'S ROW
DOVER, WA 98661-3856
396-7797

website: <http://murray.senate.gov>
e-mail: <http://murray.senate.gov/email>

PRINTED ON RECYCLED PAPER

402 EAST YAKIMA AVENUE
SUITE 390
YAKIMA, WA 98901-2760
(509) 453-7462



I

January 28, 2011

Ed Fogg
Maria Fogg
15609 SE Rivershore Drive
Vancouver, WA 98683

Dear Mr. and Mrs. Fogg:

Union Bank is in receipt of your letter addressed to the Office of the President received today, January 28, 2011.

In your letter you mention, you received notification from US Bank, informing you of a credit limit reduction on your Business Line of Credit, as well as an interest rate increase. You state, US Bank took this action as a result of derogatory credit reporting by Union Bank (formerly, "Frontier Bank"). You indicate you submitted the necessary information for a loan modification request, and have asked this review to be expedited on your behalf. Additionally, you are requesting that Union Bank remove derogatory information from your credit file.

The Office of the President would like to thank you for the opportunity to speak with you today regarding the circumstance on your loan, and the information reflecting on your credit file. Please accept our apologies for the inconvenience this may have caused you.

Upon receipt of your letter, the Office of the President conducted a review of your circumstance and we advise the information submitted to the credit bureaus were as a result of the current status on your loans. In recognition of your loan modification application received by Union Bank, as a courtesy to you, Union Bank has submitted a request to remove derogatory information from your credit file. The update on your credit file will take approximately thirty days to update from the date of this letter. Furthermore, we submitted a request to expedite the credit review process on your loan modification request.

Thank you for the opportunity to review and resolve your concerns, and appreciate your patience while waiting for a resolution on your loan modification request.

Sincerely,

Maria Avila-Velazquez, Assistant Vice President
Office of the President/Customer Care



Consumer Lending Customer Service
P.O. Box 85643, Mail Code M-910
San Diego, CA 92186-5643



July 15, 2011

EDWARD FOGG
MARIA FOGG
LOT 3 107TH SPEC
15609 SE RIVERSHORE DRIVE
VANCOUVER WA 98683

Re: Account Number 6015242016 & 6005649014

Dear Customer (s):

This is to confirm that your accounts are in good standing and your payments have been received in a timely manner monthly.

Union Bank's decision to place a hold on the refinance of your accounts referenced above should not have impacted your credit.

You can present this letter to any potential lender as confirmation that your accounts are not delinquent and all derogatory remarks will be removed upon completion of the refinance process.

If we can be of further assistance, please contact our Customer Service Department

Sincerely,

Regina Bradshaw
Customer Service Specialist
Consumer Lending Customer Service

Repaired us
w/no payments

Ed Fogg

From: Ed Fogg [ed@foggmortgage.com]
Sent: Wednesday, September 07, 2011 11:08 AM
To: 'Ed Fogg'
Subject: FW: Any news?



From: Patrick Baker
Sent: Tuesday, September 06, 2011 3:25 PM
To: Ed Fogg
Subject: RE: Any news?

Sorry no response yet

Baker, Patrick
Special Assets Officer
Special Assets Group

Union Bank | 332 Everett Mall Way
Everett, WA 98204



Please consider the impact on the environment before printing this document.

From: Ed Fogg [mailto:ed@foggmortgage.com]
Sent: Tuesday, September 06, 2011 02:46 PM
To: Patrick Baker
Subject: Any news?

Ed Fogg

This communication (including any attachments) may contain privileged or confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this communication and/or shred the materials and any attachments and are hereby notified that any disclosure, copying, or distribution of this communication, or the taking of any action based on it, is strictly prohibited.

Thank you.