

1 Q You testified that \$1,500,000 came from  
2 Private Commercial Office, Inc., according to Trustee's  
3 100 and Trustee's 101, correct?

4 A Yes.

5 Q Do you know where the difference came from?

6 A No.

7 Q Would it have come from your personal funds or  
8 some other source of revenue that Douglas Investments  
9 had?

10 A No.

11 MR. BERMAN: Objection, foundation, calls for  
12 speculation.

13 Q I'm sorry, sir?

14 A No.

15 Q Did Douglas Investments have any source of  
16 income or revenue from any source other than the  
17 payments that Mr. Engler and/or Private Commercial  
18 Office, Inc., made to Douglas Investments, LLC?

19 A During the whole period that Douglas  
20 Investments -- we did receive other funds based upon the  
21 leases on the ranch land, yes.

22 Q Okay. Let me rephrase the question then.

23 A Sure.

24 Q You testified that the \$40,815,000 came from  
25 Private Commercial Office, Inc., correct?

1 A Yes.

2 Q And that was used to purchase various  
3 properties located in Idaho and Florida, correct?

4 A Yes.

5 Q Other than the funds that Private Commercial  
6 Office paid to Douglas Investments, LLC, or monies that  
7 were generated from properties purchased with those  
8 funds, did Douglas Investments have any source of income  
9 or revenue other than those two sources?

10 A No.

11 Q So would it be fair to say that the \$2,623.20  
12 came from either monies that were transferred by Private  
13 Commercial Office, Inc., or income that was generated  
14 from properties purchased with those monies?

15 MR. BERMAN: Can you read back the question,  
16 please?

17 (Record read.)

18 Q Sir?

19 MR. BERMAN: Objection, foundation,  
20 speculation.

21 A Yes.

22 Q Sir, you testified, again, just for the  
23 record, you testified that you were the sole signer of  
24 the Douglas Investment, LLC account?

25 A Yes.

1 A Yes.

2 Q Do you know why there's a discrepancy between  
3 the amount that's owed pursuant to the schedule in  
4 Exhibit 63 and the amount of the check that's attached  
5 as Composite Exhibit B to the affidavit of Douglas  
6 Investments?

7 A Looks like the interest wasn't put on.

8 Q I'm sorry?

9 A It looks like the interest was not put on.

10 Q Was not put in where?

11 A Was not put in the business loan agreement.

12 Q I'm not asking you about the business loan  
13 agreement yet.

14 A Okay.

15 Q I'm asking you, if you look at the schedule,  
16 it shows the second payment, principal due, \$3 million,  
17 interest due, \$39,083, for a total of \$3,039,083,  
18 correct?

19 A Yes.

20 Q But the check that's dated -- corresponds with  
21 that payment is for \$3,144,667, correct?

22 A Yes.

23 Q It's a little bit over \$100,000 more than the  
24 amount of the payment?

25 A Yes.

1 Q Do you know why there's a discrepancy between  
2 the payment two on Exhibit 63 and the check that's  
3 attached to Composite Exhibit B to the affidavit?

4 A Yes.

5 Q What the reason?

6 A Mr. Moulton had relayed the wrong information  
7 on what the dollar amount that was due. He used to  
8 e-mail me to say this is coming up, and he had made a  
9 mistake and looked at the payment that was due in  
10 September.

11 Q Okay. So he gave you the wrong payment  
12 information?

13 A Yes.

14 Q Looking at Trustee's 102, it's a business loan  
15 agreement that's dated March 2, 2007, in the amount of  
16 \$3,039,000, correct?

17 A Yes.

18 Q Why isn't the business loan agreement in the  
19 amount of \$3,039,083?

20 A Could you repeat that question?

21 Q Yeah. You notice that there's a payment owed  
22 for \$3,039,083, correct?

23 A Yes.

24 Q And you testified that each of the payments  
25 that were made to Fidelity were made from funds supplied

1 by the lender --

2 A Yes.

3 Q -- Mr. Engler, correct?

4 A Yes.

5 Q And I'm asking you, why does the business loan  
6 agreement not accurately state the amount of the  
7 payment?

8 MR. BERMAN: Objection, foundation.

9 A It may have been an oversight on my part and  
10 Mr. Engler's.

11 Q Out of the 15 or so lending transactions in  
12 which you were involved, how many loans were you  
13 involved in where the loan documents incorrectly stated  
14 the amount loaned?

15 A None.

16 Q Was this the first time?

17 A Yes.

18 Q Let's -- 102 and 103, we discussed, were the  
19 same, same --

20 A Yes.

21 Q -- funding, correct?

22 Let's go to Trustee's 104. We'll start with  
23 63. Again, we'll just keep doing it that way. Payment  
24 three, we're up to payment three now, correct?

25 A Yes.

1 Q And, again, were those funds that were  
2 supplied by Ulrich Engler and/or Private Commercial  
3 Office?

4 A Yes.

5 Q Let's look at Trustee's 104. It is a business  
6 loan agreement dated April 10, 2007, so roughly five  
7 months before payment three is owed. It says it's for  
8 the Fidelity loan in the amount of \$4 million.

9 How do you explain the difference between the  
10 date and the amount?

11 MR. BERMAN: Objection to form.

12 A What is the date on this?

13 Q September 5, 2007, which if you look at  
14 Exhibit 63, it's the same date payment three in the  
15 amount of \$3,144,667 was due.

16 A How do I explain the difference?

17 Q Well, there wasn't a payment that was owed on  
18 April 10, 2007, correct?

19 A Well, can you repeat the question to me,  
20 please?

21 Q Yes. Looking at Exhibit 63, for the payment  
22 that's due, payment three that's due on September 5,  
23 2007, looking at Composite Exhibit B, the wire that was  
24 made on that date for the exact amount of the payment  
25 that was owed, and then looking at Trustee's 104, how do

1 you reconcile Trustee's 104 with the payments that were  
2 owed to Fidelity?

3 A Because of the difference in the dates. You  
4 said this was September?

5 Q September 5, 2007, the date that payment three  
6 was owed under Exhibit 63.

7 A I can't answer that question. I don't know,  
8 because there it is right here (indicating).

9 Q You're pointing to Trustee's 106 that's dated  
10 September 5, 2007?

11 A Yes.

12 Q The amount of \$3,144,667, correct?

13 A Yes.

14 Q It's true, is it not, that Trustee's 106  
15 corresponds with the wire transfer that's attached as  
16 Composite Exhibit B to the affidavit of Douglas  
17 Investments, as well as the schedule to Exhibit 63,  
18 correct?

19 MR. BERMAN: Objection, form.

20 A Yes.

21 Q Those dates and amounts match, correct?

22 A Yes.

23 Q But what you produced, sir, base loan  
24 agreements dated before September 5, 2007, they were  
25 dated April 10, 2007, and they're Trustee's 104 and 105,

1 and they're in the amount of \$4 million.

2 Can you show me where, on the Exhibit 63, this  
3 payment is reflected as being owed to Fidelity?

4 A No, other than the date is incorrect.

5 Q Okay. Can you show me anywhere where there's  
6 a \$4 million payment owed to Fidelity?

7 A No, but --

8 Q Go ahead.

9 A At the time we were having work done, so if  
10 there was a payment due, plus expenses related to the  
11 Fidelity loan, like Nelson Engineering and VLA, that  
12 would have been tacked on above and beyond what was due,  
13 and what was due to other parties, which would have been  
14 reflected by this, in the round numbers, what payments  
15 were due back to Mr. Engler, if that makes any sense.

16 Q Well, Douglas Investments, LLC, as you  
17 testified in response to Mr. Berman's questions, engaged  
18 various providers to render services in connection with  
19 the development of the property, correct?

20 A Yes.

21 Q Such as Nelson Engineering was the name that  
22 you had mentioned, correct?

23 A Yes.

24 Q And you also mentioned VLA, Verdone Landscape  
25 Architects?



1 Q Yes. You testified that there was a loan  
2 agreement prepared each time there was a payment owed to  
3 Fidelity, correct?

4 A Yes.

5 MR. BERMAN: Objection, mischaracterization.

6 Q And I asked you, before we were matching up  
7 these documents, whether each of the transfers from  
8 Private Commercial Office, Inc., reflected in  
9 Exhibit 100, were represented by business loan  
10 agreements such as Trustee's 104 through 106.

11 Do you remember me asking you that question?

12 A Yes.

13 Q And you testified they were?

14 A Yes.

15 Q My question, again, about Trustee's 104 and  
16 105 is, where on the schedule to Exhibit 63 is there a  
17 payment due on April 10, 2007, to Fidelity in the amount  
18 of \$4 million?

19 A There isn't one.

20 Q Okay. Was there a payment owed to Fidelity in  
21 the amount of \$4 million that's not reflected on  
22 Schedule B, on the schedule to Exhibit 63?

23 A No.

24 Q Let's go to the next document that's attached  
25 to Composite Exhibit B to the affidavit of Douglas

1 Q And where did Douglas Investments obtain the  
2 funds to make that payment?

3 A Private Commercial Office or -- and  
4 Mr. Engler.

5 Q Where is the business loan agreement for the  
6 March 3, 2008, wire transfer that's for payment four  
7 under the Fidelity contract?

8 A There was never one done.

9 Q Why not?

10 A Because Mr. Engler was nowhere to be found.

11 Q Okay. In the prior loan transactions that  
12 you've been involved in, on how many occasions was there  
13 a distribution and use of loan proceeds when the lender  
14 could not be located?

15 MR. BERMAN: Objection, relevance.

16 A None.

17 Q This was the first time?

18 A Yes.

19 Q May I see that affidavit, sir? I just want to  
20 keep all the exhibits together.

21 A Sure.

22 Q Thank you. When was the first time you  
23 introduced Mr. Engler to Mr. Borshell?

24 A The first time that Mr. Engler came to Idaho.

25 Q What did you tell Mr. Borshell about

1 Q Right.

2 A Sure. There were other things that were  
3 discussed.

4 Q Tell me everything that you told Mr. Borshell  
5 concerning Mr. Engler's background in business, please.

6 A He was very successful. He had over 300  
7 companies. And him and I were going to do some business  
8 together in purchasing land in Idaho.

9 Q What did you tell Mr. Borshell concerning the  
10 nature of Mr. Engler's business?

11 A That he was a day trader and very successful.

12 Q How did you know Mr. Engler was very  
13 successful?

14 A I witnessed one time how he made some of his  
15 money.

16 Q Describe that situation for me, or that event,  
17 please.

18 A He asked me to come over to my rented house,  
19 my home that he was renting, and he showed a transaction  
20 that he did, day trading, to me.

21 Q When was that?

22 A That would have been May of '06.

23 Q Okay. What happened? Did you go? Did you go  
24 to the residence?

25 A Went to the residence. I witnessed that he

1 less than one year, the entity that was transferring  
2 money to Douglas Investments, LLC, was Private  
3 Commercial Office, correct?

4 A Yes.

5 Q What did you know about Private Commercial  
6 Office?

7 MR. BERMAN: Objection, asked and answered.

8 A Nothing other than he was day trading.

9 Q Were you aware that Mr. Engler maintained a  
10 Web site for his business?

11 A Yes.

12 Q Do you recall what the Web address of that Web  
13 site was?

14 A I believe it was day trading dot com. I don't  
15 recall. I think it was day trading, I think. I'm not  
16 sure.

17 Q Did you ever visit that Web site?

18 A No.

19 Q Weren't you ever curious as to the Web site  
20 that was being utilized by a person that was  
21 transferring \$40 million to you? Weren't you curious to  
22 just visit the Web site?

23 MR. BERMAN: Objection, relevance.

24 A No.

25 Q Okay. What were the names of the corporations

1 MR. BERMAN: Objection, inappropriate  
2 question, form objection.

3 Q What was your answer, Mr. Douglas?

4 A Yes.

5 Q Thank you, Mr. Douglas.

6 What, if any, financial statements did you  
7 give to either Alliance or Fidelity for yourself  
8 personally?

9 MR. BERMAN: Objection, relevance.

10 A None.

11 Q What, if any, financial statements did you  
12 give to Alliance or Fidelity for Douglas Investments,  
13 LLC?

14 MR. BERMAN: Same objection.

15 A Isn't that the same question you just asked me  
16 before?

17 Q No. I asked you personally before.

18 A Oh, oh. Douglas Investments, no.

19 Q I'm sorry?

20 A None.

21 Q You gave Alliance or Fidelity none?

22 A None.

23 Q No financial statements for Douglas  
24 Investments, LLC?

25 MR. BERMAN: Objection, asked and answered.

1 MR. ELGIDELY: I'm trying to clarify the  
2 witness' answer.

3 A No.

4 Q Mr. Douglas, do you know if Ulrich Engler gave  
5 Alliance or Fidelity any of his financial -- his  
6 personal financial statements?

7 A Yes.

8 MR. BERMAN: Objection, relevance.

9 A Yes, I do know that.

10 Q I'm sorry. You do know what?

11 A I do know the answer to your question.

12 Q What is the answer?

13 A He did not supply anything to Fidelity. He  
14 would not supply anything to Fidelity.

15 Q Anything on behalf of himself personally or  
16 for any of his businesses?

17 A No.

18 Q You said -- you testified he would not. Why  
19 do you say --

20 A I said he would not supply anything to  
21 Fidelity.

22 Q Why do you say he would not supply anything to  
23 Fidelity?

24 A Because he was very opposed to anybody knowing  
25 his business.

1 his financial wherewithal; is that correct?

2 A Yes.

3 MR. BERMAN: Objection, hearsay.

4 A Yes.

5 Q Why do you say that?

6 A Because Mr. Engler stated to me that he would  
7 not disclose his personal life to anybody.

8 Q Why was he telling you this?

9 MR. BERMAN: Objection, speculation,  
10 foundation, hearsay.

11 A He told me that he was a very private person.

12 Q Okay. Was Mr. Engler's statement that he  
13 would not supply any financial information to Alliance  
14 or Fidelity based upon any request that you or he had  
15 obtained?

16 MR. BERMAN: Same objections, all three of  
17 them.

18 Q Let me rephrase the question.

19 Do you know if Alliance or Fidelity requested  
20 financial information from Mr. Engler?

21 A Yes.

22 Q How do you know that?

23 A Because Bret called me and said that Fidelity  
24 asked for financials on Mr. Engler.

25 Q Okay. And why was Bret telling you that?

1           A     Because Alex Maher related to Bret that that  
2     was a request of Fidelity.

3           Q     Okay. What did you do when Bret made that  
4     request of you?

5           A     I told Bret that will never happen, knowing  
6     how -- I knew how he felt, that he would never produce  
7     that.

8           Q     Okay. Did you actually ask Mr. Engler --

9           A     Yes.

10          Q     -- for that information or did you just  
11     presume he wouldn't provide that information?

12          A     I asked Mr. Engler and he said no.

13          Q     Was there any negotiating room on what he  
14     could provide, you know, maybe was there any discussion  
15     at all about him providing any financial information to  
16     Alliance or Fidelity?

17                 MR. BERMAN: Same three objections.

18          A     The only thing that we showed Alex was that he  
19     was paying -- he was lending me cash for the properties  
20     we had purchased already, and that he had the ability to  
21     be able to purchase this land.

22          Q     Okay. Let's talk about -- you said you asked  
23     Mr. Engler for copies of his financials, correct?

24          A     No. I asked -- I told Mr. Engler that Alex  
25     had requested a copy of his personal financial



1 statement, and he refused to produce any financials to  
2 anybody.

3 Q If you can recall, what did he say? Did he  
4 just say I refuse?

5 A I will not.

6 MR. BERMAN: Same objections. Go ahead.

7 A I will not share my personal life with  
8 Fidelity or anybody else, including yourself,  
9 Mr. Douglas. In those words.

10 Q Okay. And what did you do after Mr. Engler  
11 told you that? Did you relay that back to Mr. Borshell?

12 A Yes, I did.

13 Q What did you tell Mr. Borshell? Basically  
14 what Mr. Engler told you?

15 A Exactly what Mr. Engler told me.

16 Q Do you know whether Mr. Borshell relayed that  
17 to Mr. Maher or anybody from Alliance?

18 A He did relay it, and he said that this could  
19 be a deal breaker.

20 Q Who said it could be a deal breaker?

21 A Bret Borshell.

22 MR. BERMAN: Objection, hearsay. Go ahead.

23 A Bret Borshell.

24 Q So. Go ahead.

25 A Based upon a conversation that Bret had with

1 Alex that Bret responded to me that this could be a deal  
2 breaker.

3 MR. BERMAN: Objection, hearsay. Late  
4 objection.

5 MR. ELGIDELY: Was something humorous,  
6 Mr. Berman?

7 MR. BERMAN: Yes, how much embedded hearsay  
8 you're asking this witness to testify to.

9 MR. ELGIDELY: There's exceptions to the  
10 hearsay rule.

11 MR. BERMAN: I understand.

12 BY MR. ELGIDELY:

13 Q So, Mr. Douglas, how did you react when  
14 Mr. Borshell told you it could be a deal breaker?

15 MR. BERMAN: Same objections.

16 A Then let it be a deal breaker.

17 Q I asked you about financial statements, but  
18 this provision also talks about a recent bank statement.  
19 Did you provide Alliance or Fidelity any bank statements  
20 for yourself personally?

21 A No.

22 Q Did you provide Alliance or Fidelity any bank  
23 statements for Douglas Investments, LLC?

24 MR. BERMAN: Objection, relevance.

25 A Not that I can recall.

1 Q Did you provide Alliance -- or strike that.

2 Do you know whether Mr. Engler provided

3 Alliance or Fidelity any bank statements?

4 MR. BERMAN: Objection, relevance.

5 A Yes, I do know.

6 Q And what is the answer to that question?

7 A No.

8 Q Was that something that was also discussed

9 with Mr. Engler?

10 A Yes.

11 Q What did he say about the bank statements?

12 MR. BERMAN: Objection, hearsay.

13 A Mr. Engler told me that he would not share his

14 private life with Fidelity or anybody else, including

15 myself, and he was adamant about that.

16 Q Is that information that you shared with

17 Mr. Borshell?

18 A Yes.

19 Q Do you know whether Mr. Borshell communicated

20 that to Alex Maher or anybody from Alliance?

21 A He was instructed to. I wasn't there when he

22 called them.

23 Q Okay. Do you know Mr. Borshell conveyed that

24 to anyone from Fidelity or anyone on Fidelity's behalf?

25 A Everything was being done with Alex and with

1 A I don't remember seeing it, no.

2 Q Okay. It also says 25 years in the investment  
3 business, correct?

4 A Yes.

5 Q But according to the articles of organization  
6 that are attached to it, the corporation was only in  
7 existence on October 23, 2006, correct?

8 A Yes.

9 Q It doesn't list the name of the business that  
10 Mr. Engler had been conducting investment business for  
11 over 25 years, does it?

12 A No.

13 Q Do you know whether that information was ever  
14 shared with Mr. Borshell or Mr. Maher or anyone from  
15 Fidelity?

16 A Yes, I know that.

17 Q You do know that?

18 A I do know the answer to that.

19 Q What is the answer?

20 A No.

21 Q It was never shared with them?

22 A No.

23 Q Again, why is that?

24 A Because, again, Mr. Engler was a very private  
25 person.

1 to be Ulrich Engler's, correct?

2 A Yes.

3 Q Did Mr. Engler have any -- did he have any  
4 reason to know about an amendment to the operating  
5 agreement of Douglas Investments, LLC?

6 MR. BERMAN: Can you read back the question?

7 (Record read.)

8 MR. BERMAN: Objection, foundation,  
9 speculation.

10 A Yes.

11 Q What was that?

12 A He was, as we discussed before, that he was  
13 concerned in case I died that he wanted my wife to be  
14 able to resume my role.

15 Q Okay. Numbered paragraph 3 of this document  
16 says, Once both David and Debra are deceased, and Engler  
17 owns all of David's membership interest and Debra's  
18 membership interest, then Engler shall proceed, within a  
19 reasonable period of time, to liquidate all of the  
20 assets of Douglas Investments, LLC.

21 Do you see that sentence there?

22 A Yes.

23 Q Did I read that accurately?

24 A Yes.

25 Q And we had talked before about Mr. Engler's

1 entitlement to share in the profits from the sale of  
2 these properties by Douglas Investments, LLC?

3 A Yes.

4 Q Do you recall us going through that?

5 A Yes.

6 Q Did Mr. Engler also have an interest in  
7 Douglas Investments, LLC?

8 MR. BERMAN: Objection, calls for a legal  
9 conclusion.

10 A Did he have an interest, yes.

11 Q And what was that interest?

12 A The repayment and the 10 percent of the gross  
13 sales.

14 Q Okay. But it talks about Engler becoming the  
15 owner of David's membership interest and Debra's  
16 membership interest in Douglas Investments, LLC,  
17 correct?

18 A Yes.

19 Q Did this document contemplate that, upon your  
20 death and your spouse's death, Mr. Engler would be the  
21 sole member of Douglas Investments, LLC?

22 A Yes.

23 MR. BERMAN: Objection, calls for a legal  
24 conclusion.

25 Q I didn't hear your answer.

1 A Yes.

2 (Thereupon, Exhibit T116 was marked for  
3 identification.)

4 BY MR. ELGIDELY:

5 Q Okay. Let's go to 116, please. This  
6 document, Mr. Douglas, purports to be a third amendment  
7 to the operating agreement of Douglas Investments, LLC,  
8 and it purports to bear your signature as well as your  
9 spouse's signature. Is that, in fact, your signature?

10 A Yes.

11 Q Do you recognize your spouse's signature?

12 A Yes.

13 Q Is that her signature?

14 A Yes.

15 Q Is this a true and correct copy of the third  
16 amendment?

17 A Yes.

18 Q What was the purpose of this third amendment?

19 A To specify on my behalf who would receive  
20 profits and that Mr. Engler, who would receive profits  
21 in case he died.

22 Q The document talks about in the event that you  
23 and your spouse are deceased, then Mr. Engler shall  
24 become the sole person in charge to manage the business  
25 and affairs of the company, correct?

1 A Yes.

2 Q And by company, it's referring to Douglas  
3 Investments, LLC?

4 A Yes.

5 Q The document also speaks to a management  
6 committee comprised of various individuals, correct?

7 A Yes.

8 Q And then there's a column for you and there's  
9 a column for Mr. Engler?

10 A Yes.

11 Q In addition to Ms. Borowski, who we discussed,  
12 it lists a woman, I believe, by the name of Roswitha,  
13 R-O-S-W-I-T-H-A, App, A-P-P.

14 Do you know who that is?

15 A I believe that's his mother, Mr. Engler's  
16 mother.

17 Q And how about Lisa-Marie Engler?

18 A That would be his daughter.

19 Q And it says, All decisions of the management  
20 committee shall be governed by the vote of Bradley  
21 Freeman, plus at least two of the other members of the  
22 committee, correct?

23 A Yes.

24 Q On the second page, it purports to bear  
25 Mr. Engler's signature?



1 A Yes.

2 Q Do you see that there?

3 A Yes.

4 Q Do you believe that to be his signature?

5 A Yes.

6 Q On the last page, it has a name list, and it  
7 has the names of certain individuals and their  
8 addresses, as well as it looks like their telephone  
9 numbers; is that correct?

10 A Yes.

11 Q The number that's listed at 91 Southport Cove  
12 is (239)770-8702. Was that a telephone line that was  
13 maintained in your name while Mr. Engler was renting the  
14 property from you?

15 A No.

16 Q What is that number?

17 A I believe that to be her cell phone number.

18 (Thereupon, Exhibit T117 was marked for  
19 identification.)

20 BY MR. ELGIDELY:

21 Q Okay. Let's go to 117, please. I'm going to  
22 direct you to -- these are the corporate records for  
23 Engler Land Investments. I'm going to direct you to the  
24 articles dissolution. Let's go --

25 A What?

1 A Yes.

2 (Thereupon, Exhibit T118 was marked for  
3 identification.)

4 BY MR. ELGIDELY:

5 Q Let's go to Trustee's 118, please. This  
6 document, Mr. Douglas, purports to be a business loan  
7 agreement dated June 22, 2007. And at the top it says  
8 8 Cold Springs Lane?

9 A Yes.

10 Q Are you familiar with this document?

11 A Yes, I am.

12 Q What is 8 Cold Springs Lane?

13 MR. BERMAN: Objection, relevance.

14 A It's a residential home in Teton Springs which  
15 is located in Victor, Idaho.

16 Q Who was the owner of that property?

17 MR. BERMAN: Same objection.

18 A Douglas Investments.

19 Q Why did Douglas Investments purchase that  
20 property?

21 A Mr. Engler wanted Douglas Investments to buy a  
22 home for himself.

23 Q Why would Mr. Engler want Douglas Investments  
24 to purchase a home for Mr. Engler?

25 MR. BERMAN: Objection, foundation,

1 speculation.

2 A Because he was spending a lot of time in the  
3 area.

4 Q Why didn't Mr. Engler put it in his own name  
5 or one of his corporations' names?

6 MR. BERMAN: Same objections.

7 A Same reasons as double taxation and the  
8 divorce issues.

9 Q So Mr. -- is it fair to say that Mr. Engler --  
10 well, strike that.

11 Did Mr. Engler tell you that was the reason  
12 why he wanted this property to be purchased by Douglas  
13 Investments for his use?

14 MR. BERMAN: Same objections and now hearsay.  
15 Go ahead.

16 A Yes.

17 Q And you felt comfortable putting -- strike  
18 that.

19 And you felt comfortable buying property for  
20 Mr. Engler's use, entitling it in the name of Douglas  
21 Investments?

22 A Yes.

23 Q If the property was purchased for Mr. Engler's  
24 use so that it wouldn't be titled in his name because of  
25 double taxation and divorce reasons, why is it the

1 happen upon the death of the members. Do you recognize  
2 this document?

3 A Yes.

4 Q Is that your signature?

5 A Yes.

6 Q Is that your spouse's signature?

7 A Yes.

8 Q And do you recognize Mr. Engler's signature?

9 A Yes.

10 Q Like the prior amendments to the operating  
11 agreement for Douglas Investments, LLC, it indicates  
12 that in the event of you and your spouse's deaths,  
13 Mr. Engler shall be in charge of managing the business  
14 affairs of the company, and also talks about a  
15 management committee that would make decisions in the  
16 event Mr. Engler would be deceased or otherwise  
17 unavailable.

18 Is that the individuals that were selected to  
19 be the management committee?

20 A Yes.

21 Q What did you all mean when you said "otherwise  
22 unavailable"? Did you have something in mind at the  
23 time?

24 A Mr. Engler, at that time, was going on a  
25 two-year sabbatical.

1 had been paid to Fidelity?

2 A As of February 26th, that's how much was paid  
3 to Fidelity, yes.

4 Q Whose handwriting is on this e-mail?

5 A Mine.

6 Q It also says, in the margin or to the right of  
7 the typed terms, September 5, 2007, Fidelity, 3,144,667?

8 A Yes.

9 Q Do you see that? Why was that written on  
10 there?

11 A I think I -- I'm not sure why I wrote that on  
12 there.

13 Q Well, let's go down the Fidelity column. It  
14 talks about a payment due March 7, 2008, September 5,  
15 2008, March 8, 2009, September 5, 2009, and the amounts  
16 of those payments. Do you see that?

17 A Uh-huh.

18 Q Why were you sharing this information with  
19 Mr. Engler?

20 A Because that's the payments that were coming  
21 due that we still had to pay.

22 Q Why did he need to know that information?

23 A Because he was funding the project.

24 Q Okay. Again, even though you and I may know  
25 the answer, we've just got to create a record. So I'm

1 A That's correct.

2 Q -- to Douglas?

3 A That's correct.

4 Q But you know, sitting here today, that the  
5 money that Private Commercial Office transferred was  
6 actually money provided by Mr. Engler's day trading  
7 business?

8 MR. BERMAN: Objection, speculation.

9 A Do I know that today?

10 Q Yes.

11 A Yes.

12 Q You know that Mr. Engler purported to be in  
13 the day trading business?

14 A Yes.

15 Q What is your understanding of what a day  
16 trading business is?

17 A Buying.

18 MR. BERMAN: Objection, relevance.

19 A Buying and selling stocks.

20 Q Now, if Mr. Engler was using funds that were  
21 designated for the purpose of buying and selling stocks  
22 to purchase real estate, you would agree that's not an  
23 authorized use?

24 A Yes.

25 MR. BERMAN: Objection, calls for a legal

1 of August. I will pick up and put on car. Hummer will  
2 be detailed and crash guard will be installed by Friday.

3 What Hummer were you referring to?

4 MR. BERMAN: Objection, relevance.

5 A The Hummer 2 that's in my garage that  
6 Mr. Engler asked Douglas Investments to purchase.

7 Q Is this a Hummer vehicle that was purchased by  
8 Douglas Investments for Mr. Engler's personal use?

9 MR. BERMAN: Objection, relevance.

10 A Yes.

11 Q Is this, again, an example of property that  
12 was titled in the name of Douglas Investments, LLC,  
13 because of Mr. Engler's double taxation and divorce  
14 concerns?

15 A Yes.

16 MR. BERMAN: Objection, relevance.

17 Q Your answer, sir?

18 A Yes.

19 Q And you decided to title it in the name of  
20 Douglas Investments, LLC, because of Mr. Engler's  
21 concerns?

22 MR. BERMAN: Same objection.

23 A Yes.

24 Q Is there a business loan agreement for the  
25 Hummer?

1 have done business with Mr. Engler?

2 A I don't think I would have, no.

3 Q Do you know if any of the information from  
4 this extradition document was ever shared by you with  
5 Fidelity?

6 A No.

7 Q And do you know, of your own personal  
8 knowledge, if anyone shared information about some  
9 extradition document with Fidelity representatives?

10 A No.

11 MR. BERMAN: I don't have any further  
12 questions.

13 MR. ELGIDELY: I just have a couple follow-up,  
14 Mr. Douglas.

15 RECROSS-EXAMINATION

16 BY MR. ELGIDELY:

17 Q Mr. Douglas, you indicated and testified that  
18 you were involved in 15 approximately loan transactions  
19 before you had a lending relationship with Mr. Engler,  
20 correct?

21 A Yes.

22 Q What was the process that you engaged in with  
23 these financial institutions in order to be -- in order  
24 to be approved for the loans?

25 MR. BERMAN: Objection, relevance. You can go



1 ahead.

2 A The normal process of loan application,  
3 documents provided and asked for and waiting for  
4 approval.

5 Q So taking that one step at a time, in the  
6 15 transactions that you were involved in prior to the  
7 lending relationship with Mr. Engler, how many of those  
8 transactions did you have to fill out a loan application  
9 for?

10 A All of them.

11 Q In those 15 transactions, approximately how  
12 many did you have to supply financial information for?

13 A All of them.

14 Q Out of those approximately 15 transactions,  
15 how many did you have to wait for the bank or lending  
16 institution's approval before you got the loan proceeds?

17 MR. BERMAN: Objection, relevance.

18 A Maybe 14 of them.

19 Q 14 out of the 15?

20 A Yes.

21 Q On the 15th one, why didn't you have to wait  
22 for the lending institution's approval before you got  
23 the loan proceeds?

24 A Because I was approved immediately.

25 Q Okay. After you applied and supplied the

1 financial information?

2 A Yes.

3 Q And how did that differ, that process, how did  
4 that process differ with the loans from Mr. Engler?

5 MR. BERMAN: Objection, relevance.

6 A Well, he never followed the procedure that the  
7 lending institutions that I had used in the past, he  
8 didn't follow that procedure.

9 Q Okay. Did you apply, at any time, for any of  
10 the loans that you obtained from Mr. Engler?

11 A Through Mr. Engler?

12 Q Yeah. Did you fill out an application to be  
13 approved for a loan for Mr. Engler?

14 A No.

15 Q At any time?

16 A No.

17 Q Did you supply Mr. Engler your personal  
18 financial statements in order for him to review and  
19 consider in extending the loans to you?

20 A No.

21 Q Did you provide any financial statements for  
22 any businesses that you were affiliated with for  
23 Mr. Engler to review and consider in making the decision  
24 to extend the loan to you?

25 A No.

1 Q You would agree that \$40,815,000 of loan  
2 proceeds over a course of 11 months is a pretty  
3 significant loan, correct?

4 MR. BERMAN: Objection, relevance.

5 A Yes.

6 Q Wouldn't you expect a lender to require  
7 financial information and the normal commercial  
8 protocols to be followed in connection with a  
9 \$40 million loan?

10 MR. BERMAN: Objection, relevance,  
11 speculation, foundation. Go ahead.

12 A Can I elaborate on that?

13 Q You can elaborate on any of your answers.

14 A As I have stated before, that this started off  
15 pretty simple, and simple in a sense that it was a  
16 smaller dollar amount than the \$40 million that it ended  
17 up being. Based upon -- based upon Mr. Engler's  
18 confidence in me, that I didn't find it surprising, no.

19 Q Okay. Well, let's talk about Exhibit 100. Do  
20 you have a copy of that, sir?

21 MR. BERMAN: Is this Trustee's 100 or my 100?

22 MR. ELGIDELY: Trustee's 100.

23 A Is that showing all the dollar amounts that  
24 was loaned to me?

25 Q Yeah. It's Trustee's 100. It's the forensic

1 accounting analysis that we were talking about earlier.

2 A I have it here, yes.

3 Q The first transfer by Private Commercial  
4 Office, Inc., was on August 3rd, 2006, in the amount of  
5 \$535,000, correct?

6 A Yes.

7 MR. BERMAN: Objection, foundation.

8 Q And you don't dispute receiving those funds  
9 from Private Commercial Office, Inc., right?

10 MR. BERMAN: Objection, foundation.

11 A No.

12 Q And that was a significant transfer, was it  
13 not?

14 A Yes.

15 Q And what, if any, application was submitted --  
16 to be submitted to be approved for a \$535,000 loan?

17 A None.

18 Q Okay. What, if any, financials were provided  
19 in order to be approved for that \$535,000 loan?

20 A None.

21 Q What, if any, security was provided to the  
22 lender for that \$535,000 loan?

23 A None.

24 Q Who prepared the business loan agreement  
25 documenting that \$535,000 loan?

1 A The document itself, Brad Freeman.

2 Q Your attorney, correct?

3 A Yes.

4 Q As the borrower?

5 A Yes.

6 Q Let's go to the second loan, \$5,300,000 on  
7 August 3rd 2006. The same day as the \$535,000 loan,  
8 correct?

9 A Yes.

10 Q You acknowledge receiving those funds?

11 A Yes.

12 Q What, if any, application did you submit in  
13 order to be approved for that loan?

14 A None.

15 MR. BERMAN: Objection, relevance.

16 A None.

17 Q What, if any, financials did you provide to  
18 Mr. Engler in order to be approved for that loan?

19 A None.

20 Q What, if any, security did you provide to  
21 Mr. Engler for that loan?

22 A None.

23 Q Same thing with respect to the third transfer  
24 on August 23, 2006 in the amount of \$3 million. Was  
25 there any application?

1 A No.

2 Q Was there any financials provided?

3 A No.

4 Q Was there any security provided?

5 A No.

6 Q Next transfer, December 31, 2006, in the  
7 amount of \$2,500,000. Was there any application?

8 A No.

9 Q Any financials provided?

10 A No.

11 Q Any security given?

12 A No.

13 MR. BERMAN: May I ask a question? Is that  
14 the first Fidelity payment?

15 MR. ELGIDELY: It says December 12, 2006. I'm  
16 asking the questions, so if you want to --

17 MR. BERMAN: I'm going to interpose an  
18 objection, form and foundation.

19 Q Okay. You can answer still, Mr. Douglas.

20 A No.

21 Q You said that the relationship started out  
22 slow. I mean, on August 3, 2006, you received  
23 \$5,835,000.

24 Would you actually characterize that as a slow  
25 start to a lending relationship, where there's no

1 application, there's no financials, and there's no  
2 security?

3 MR. BERMAN: Argumentative.

4 A No.

5 Q I'm sorry?

6 A No.

7 Q Okay. Going to the loan on January 5th, 2007,  
8 to Douglas Investments, in the amount of \$1,100,000, any  
9 application?

10 A No.

11 Q Any financials?

12 A No.

13 Q Any security?

14 A No.

15 MR. BERMAN: Objection, form and foundation.

16 A No.

17 MR. ELGIDELY: If you want to have that  
18 standing objection --

19 MR. BERMAN: No, I don't.

20 MR. ELGIDELY: -- to all his answers -- you'd  
21 rather say them one by one?

22 MR. BERMAN: Yeah.

23 BY MR. ELGIDELY:

24 Q The same day, Mr. Douglas, there was a  
25 \$2,700,000 loan to Douglas Investments. Any

1 application?

2 A No.

3 Q Any financials?

4 A No.

5 Q Any security given?

6 A No.

7 MR. BERMAN: Same objection, form and  
8 foundation.

9 A No.

10 Q The same day, again, Mr. Douglas, loan to  
11 Douglas Investments in the amount of \$3,680,000. Any  
12 application?

13 A No.

14 Q Any financials given?

15 A No.

16 Q Any security given?

17 A No.

18 MR. BERMAN: Objection, form and foundation.

19 Q Mr. Douglas, you see on that day, January 5,  
20 2007, you received three separate loans for over  
21 \$7 million, correct?

22 A Yes.

23 Q Let's go to February 8, 2007. There's a loan  
24 for \$4 million. You see that there?

25 A Yes.



1 Q Any application?

2 A No.

3 Q Any personal financial statements?

4 A No.

5 Q Any security given?

6 A No.

7 Q February 12, 2007, there's another \$4 million  
8 loan to Douglas Investments. Any application?

9 A No.

10 Q Any financial statements given?

11 A No.

12 Q Any security given?

13 A No.

14 Q April 3, 2007, there's a \$4 million loan to  
15 Douglas Investments. Any application?

16 A No.

17 Q Any financial statements given?

18 A No.

19 Q Any security given?

20 A No.

21 Q July 2, 2007, there's a \$2 million loan given  
22 to Douglas Investments. Any application?

23 A No.

24 Q Any financials?

25 A No.

1 Q Any security given?

2 A No.

3 Q July 2, 2007, there's a \$2 million loan given  
4 to Douglas Investments. Any application?

5 A No.

6 Q Any financials given?

7 A No.

8 Q Any security given?

9 A No.

10 Q July 16, 2007, there's a \$4 million loan to  
11 Douglas Investments. Any application?

12 A No.

13 Q Any financials given?

14 A No.

15 Q Any security given?

16 A No.

17 Q On July 16, 2007, there's a \$4 million loan  
18 given to Douglas Investments. Any application?

19 A No.

20 Q Any financials?

21 A No.

22 Q Any security given?

23 A No.

24 Q You would agree with me, would you not, that  
25 these loans that are reflected in Exhibit 100, the

1 process to obtain these loan proceeds was very different  
2 from the process you had followed in the 15 prior loan  
3 transactions in which you were involved, correct?

4 MR. BERMAN: Objection, relevance.

5 A Yes.

6 Q And you would agree that there were only 13  
7 transfers between August 8, 2006 and July 16, 2007 that  
8 made up the \$40,815,000 that Private Commercial Office  
9 transferred to Douglas Investments, correct?

10 MR. BERMAN: Objection, foundation, relevance.

11 A Yes.

12 Q You would agree that these are pretty big  
13 transfers, wouldn't you?

14 A Yes.

15 MR. BERMAN: Objection, foundation, or  
16 objection, relevance.

17 A Yes.

18 Q And, again, what was the largest loan you had  
19 received prior to your relationship with Mr. Engler?

20 MR. BERMAN: Objection, asked and answered.

21 A 900,000.

22 Q Were you aware that JPMorgan, Chase Bank filed  
23 a lawsuit in federal district court against Mr. Engler  
24 and Private Commercial Office a year before the  
25 involuntary bankruptcy proceeding, stating that

1 Q We had talked about you with Driggs industrial  
2 park up in Idaho. You had done some construction there?

3 A Infrastructure. We didn't go vertical.

4 Q In connection with your experience as a  
5 developer, you had come to obtain financing from lending  
6 institutions for those projects, correct?

7 A Yes.

8 Q And those obligations were collateralized by  
9 mortgages recorded in the public records, correct?

10 A Yes.

11 Q And would you say that's pretty customary for  
12 a real estate transaction, is when a lender gives you a  
13 loan for real estate, they want security by virtue of  
14 recording a mortgage in the public records?

15 A Yes.

16 Q And, to your knowledge, was a mortgage  
17 recorded by Engler or Private Commercial Office on any  
18 of the properties that are the subject of the business  
19 loan agreements?

20 MR. BERMAN: Objection, foundation,  
21 speculation.

22 A No.

23 Q Okay. And, again, is that because Mr. Engler  
24 had his concerns about double taxation and divorce  
25 issues?

1 MR. BERMAN: Objection, speculation.

2 A Yes.

3 Q And he told you that, correct?

4 A Yes.

5 MR. ELGIDELY: I have no further questions.

6 MR. BERMAN: I have one follow-up.

7 REDIRECT EXAMINATION

8 BY MR. BERMAN:

9 Q Did you know, Mr. Douglas, that you can grant  
10 someone a security interest even though they don't  
11 record that security interest in the public records?

12 A No.

13 MR. ELGIDELY: I don't have any further  
14 questions.

15 MR. BERMAN: I have a follow-up question.

16 MR. CIMO: Guys, let's move on; end it.

17 MR. ELGIDELY: Okay.

18 MR. CIMO: Thank you. Enough.

19 MR. ELGIDELY: Mr. Douglas, for the record,  
20 you have the right to read your transcript to  
21 determine whether it's accurate, and if it's not  
22 accurate, to make changes to your testimony, or you  
23 can waive your right to read your transcript.

24 I believe Mr. Moulton told me when he  
25 authorized us to meet yesterday, and for you to be