

1 IN THE CAUSE NOW PENDING BEFORE THIS COURT TO BE THE TRUTH, THE
2 WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

3 THE WITNESS: I DO.

4 THE CLERK: BE SEATED PLEASE. STATE YOUR NAME FOR
5 THE RECORD.

6 THE WITNESS: MY NAME IS ROBERT BURROUGHS,
7 B-U-R-R-O-U-G-H-S.

8 - - -

9 ROBERT BURROUGHS

10 BEING DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. MOYE:

13 Q MR. BURROUGHS, HOW ARE YOU EMPLOYED, SIR?

14 A I'M A LAWYER.

15 Q AND WHEN WERE YOU LICENSED TO PRACTICE?

16 A 1978.

17 Q AND HAVE YOU PRACTICED SINCE THAT TIME IN THE ATLANTA
18 AREA?

19 A YES, I HAVE.

20 Q WHAT IS THE PRIMARY AREA OF YOUR PRACTICE?

21 A A REAL ESTATE CLOSING ATTORNEY.

22 Q AND HAS THAT BEEN YOUR AREA OF EXPERTISE SINCE 1977 OR
23 THEREABOUTS?

24 A SINCE 1978. THAT'S CORRECT.

25 Q '78?

1 A THAT'S CORRECT.

2 Q ALL RIGHT, SIR. DURING THAT PERIOD OF TIME, CAN YOU TELL
3 US, MR. BURROUGHS, ABOUT HOW MANY REAL ESTATE CLOSINGS YOU HAVE
4 BEEN INVOLVED IN?

5 A OH, I WOULD SAY PROBABLY SEVEN, EIGHT HUNDRED A YEAR. SO
6 WHATEVER THAT IS TIMES 15 YEARS OR 13 YEARS I HAVE BEEN
7 PRACTICING.

8 Q ALL RIGHT, SIR. LET ME ASK YOU, MR. BURROUGHS, IF YOU AT
9 THE REQUEST AND UNDER SUBPOENA FROM THE GOVERNMENT BROUGHT A
10 FILE RELATED TO A PIECE OF PROPERTY AT 4070 CASCADE ROAD, AND
11 IN PARTICULAR A CLOSING THAT OCCURRED ON 9-11-89?

12 A YES, I DID.

13 Q DO YOU HAVE THAT FILE WITH YOU, SIR?

14 A I DO.

15 Q MAY I HAVE IT, PLEASE.

16 MR. BURROUGHS, I HAND YOU WHAT I HAVE JUST MARKED FOR
17 IDENTIFICATION PURPOSES AS GOVERNMENT EXHIBIT 117 AND ASK YOU
18 IF YOU WOULD TELL US WHAT GOVERNMENT'S 117 IS?

19 A THIS IS MY REAL ESTATE CLOSING FILE FROM 1989 INVOLVING
20 THE PURCHASE OF THE PROPERTY AT 4070 CASCADE ROAD IN ATLANTA.

21 Q IN THAT FILE, MR. BURROUGHS, IS THERE A SETTLEMENT
22 STATEMENT?

23 A YES, THERE IS.

24 Q AND THE SETTLEMENT STATEMENT THAT YOU HAVE, IS THAT A
25 SIGNED DOCUMENT?

1 A YES, IT IS.

2 Q MAY I SEE THAT, PLEASE, SIR.

3 I NOW HAND YOU WHAT I HAVE MARKED FOR IDENTIFICATION
4 GOVERNMENT EXHIBIT 117-A AND ASK YOU IF YOU WOULD IDENTIFY THAT
5 FOR THE RECORD?

6 A THIS IS THE SETTLEMENT STATEMENT WHICH SHOWS THE FINANCIAL
7 PART OF THE TRANSACTION BETWEEN THE PURCHASER, VIRGINIA HIGH
8 AND THE SELLERS JOSEPH AND SHIRLEY MCKIBBINS.

9 Q LET ME ASK YOU, MR. BURROUGHS, IF YOU COULD TELL US, YOU
10 DID HANDLE THIS CLOSING, DID YOU NOT?

11 A YES, I DID.

12 Q AT THAT CLOSING, WHO WAS YOUR CLIENT?

13 A MRS. HIGH.

14 Q NOW, MR. BURROUGHS, ON THE DATE OF THE CLOSING -- AND WHAT
15 WAS THAT DATE?

16 A SEPTEMBER 11TH, 1989.

17 Q CAN YOU TELL US WHO -- WHERE THE CLOSING TOOK PLACE?

18 A IN MY OFFICE ON, SUITE 360, 1745 PHOENIX BOULEVARD IN
19 ATLANTA.

20 Q AND WHO WAS PRESENT AT THE CLOSING?

21 A MRS. HIGH AND THE SELLERS, JOSEPH AND SHIRLEY MCKIBBINS.

22 Q NOW THE DOCUMENT, THE SETTLEMENT STATEMENT, GOVERNMENT
23 EXHIBIT 117-A, CAN YOU TELL US WHO SIGNED THE SETTLEMENT
24 STATEMENT?

25 A THE PURCHASER AS WELL AS THE SELLERS, ALONG WITH MYSELF AS

1 THE SETTLEMENT ATTORNEY.

2 Q NOW, THE VIRGINIA HIGH WHO WAS THE PURCHASER IN THIS CASE,
3 DO YOU SEE HER IN THE COURTROOM?

4 A YES, I DO.

5 Q WOULD YOU IDENTIFY HER, PLEASE, FOR THE RECORD?

6 A MS. HIGH IS SITTING BESIDE MR. ABBOTT.

7 MR. MOYE: ALL RIGHT. YOUR HONOR, MAY THE RECORD
8 REFLECT THAT THE WITNESS HAS IDENTIFIED THE DEFENDANT VIRGINIA
9 HIGH?

10 THE COURT: ALL RIGHT.

11 MR. MOYE: I WOULD TENDER, YOUR HONOR, FOR THE
12 PURPOSE OF GOING INTO THE CONTENTS, GOVERNMENT'S EXHIBIT 117-A,
13 THE SETTLEMENT STATEMENT.

14 THE COURT: MR. AXAM, DO YOU HAVE ANY OBJECTION?

15 MR. AXAM: NO.

16 THE COURT: MR. ABBOTT?

17 MR. ABBOTT: NONE.

18 MR. ROSEN: NONE, YOUR HONOR.

19 THE COURT: ALL RIGHT.

20 BY MR. MOYE:

21 Q MR. BURROUGHS, WOULD YOU DESCRIBE, SIR, WHAT WAS THE
22 CONTRACT SALES PRICE, TELL US WHAT THE CONTRACT SALES PRICE WAS
23 OF THE PROPERTY?

24 A OKAY. THE CONTRACT SALES PRICE WAS \$290,000.

25 Q NOW, AT THE CLOSING WAS -- WHAT WAS THE AMOUNT OF MONEY

1 THAT WAS DUE AND OWING FROM THE PURCHASER TO THE SELLER
2 ACCORDING TO THE SETTLEMENT STATEMENT?

3 A THE AMOUNT THAT WAS DUE AND OWING TO THE SELLER?

4 Q YES, SIR.

5 A OKAY, IT WOULD HAVE BEEN -- WELL, I MEAN, THE PURCHASE
6 PRICE LESS THESE ITEMS THAT WE DEDUCTED FROM THE SELLER'S
7 MONEY. I MEAN, THE SELLER ACTUAL NET AT THE CLOSING WAS ZERO
8 SIMPLY BECAUSE OF THESE DISBURSEMENTS THAT WERE MADE.

9 Q ALL RIGHT, SIR. WHAT WAS THE AMOUNT THAT WAS PAID BY THE
10 PURCHASER?

11 A OKAY. THE AMOUNT PAID BY THE PURCHASER AT CLOSING WAS
12 \$239,610.60.

13 Q NOW, AT THE BOTTOM OF THE SETTLEMENT STATEMENT ON THE SIDE
14 RELATED TO THE BORROWER'S TRANSACTION APPEARS THE AMOUNT TWO
15 TWENTY NINE SIX TEN?

16 A THAT'S CORRECT.

17 Q WHY IS THERE A DIFFERENCE?

18 A BECAUSE ON THE CLOSING STATEMENT I HAD REFLECTED A CREDIT
19 OF EARNEST MONEY OR THE SECURITY DEPOSIT THAT HAD BEEN PAID IN
20 ADVANCE OF THE -- WHICH WAS \$10,000, AND WE ALSO COLLECTED THAT
21 AT CLOSING.

22 Q MR. BURROUGHS, CAN YOU TELL US IF YOU HAVE IN YOUR FILE,
23 GOVERNMENT EXHIBIT 117, THE RECORDS RELATED TO THE METHOD BY
24 WHICH YOU RECEIVED THE \$239,610.60?

25 A YES, I DO.

1 Q MAY I HAVE THOSE, PLEASE, SIR.

2 MR. MOYE: MAY I HAVE JUST A MOMENT, YOUR HONOR?

3 THE COURT: ALL RIGHT.

4 Q MR. BURROUGHS, I HAND YOU WHAT I HAVE MARKED FOR
5 IDENTIFICATION AS GOVERNMENT 117-B AND ASK YOU, SIR, WHAT THOSE
6 DOCUMENTS ARE, IF YOU WOULD IDENTIFY THEM FOR THE RECORD?

7 A THESE REPRESENT THE MONEYS THAT WERE PAID TO ME.

8 Q WERE THOSE THE MONEYS PAID TO YOU AT CLOSING OR ARE THOSE
9 ALL THE MONEYS THAT WERE PAID TO YOU DURING THE COURSE OF THIS
10 TRANSACTION?

11 A I BELIEVE THESE WERE THE FUNDS THAT WERE PAID TO ME AT
12 CLOSING.

13 Q NOW, THE DOCUMENTS THAT YOU HAVE THERE, MR. BURROUGHS, HOW
14 DID YOU COME INTO POSSESSION OF GOVERNMENT'S 117-B?

15 A THESE WERE COPIES THAT CITIZENS TRUST BANK FURNISHED TO
16 ME.

17 Q AND WAS THAT DONE AT THE REQUEST OF THE GOVERNMENT?

18 A THAT'S CORRECT.

19 Q AND DID YOU REQUEST YOUR BANK -- WAS THIS ON YOUR ACCOUNT?

20 A YES, IT WAS.

21 Q NOW, MR. BURROUGHS, CAN YOU TELL US WHAT WAS DELIVERED TO
22 YOU AT CLOSING IN ORDER TO -- BY THE PURCHASER IN ORDER TO
23 PROVIDE YOU WITH \$239,610.60?

24 A WELL, I RECEIVED THAT AMOUNT AND IT WAS IN THE FORM OF --
25 LET'S SEE, \$212,393.96 IN CHECKS.

- 1 Q HOW MANY CHECKS?
- 2 A LET'S SEE. I HAVEN'T COUNTED THEM.
- 3 Q PLEASE DO.
- 4 A IT LOOKS LIKE APPROXIMATELY 33 CHECKS.
- 5 Q WHAT WAS THE LARGEST AMOUNT ON THOSE CHECKS?
- 6 A TEN THOUSAND DOLLARS.
- 7 Q WHAT WAS THE SMALLEST AMOUNT?
- 8 A FOUR HUNDRED NINETY-NINE DOLLARS AND NINETY NINE CENTS.
- 9 Q THE CHECKS, HOW MANY DIFFERENT FINANCIAL INSTITUTIONS WERE
10 THE CHECKS DRAWN ON, CAN YOU TELL?
- 11 A LOOKS LIKE APPROXIMATELY SIX.
- 12 Q IS THERE MORE THAN ONE CHECK FROM SOME OF THOSE FINANCIAL
13 INSTITUTIONS?
- 14 A YES.
- 15 Q THE CHECKS, CAN YOU TELL US TO WHOM THEY WERE MADE
16 PAYABLE?
- 17 A THEY ARE MADE PAYABLE TO VIRGINIA HIGH.
- 18 Q ARE THERE ANY THAT ARE MADE PAYABLE TO ROBERT BURROUGHS?
- 19 A YES. I SEE ONE, TWO -- I SEE ONE, TWO, THREE, FOUR --
20 YES, THERE ARE SOME MADE PAYABLE TO ROBERT BURROUGHS.
- 21 Q ARE THERE ANY THAT ARE LISTED AS PAYABLE TO VIRGINIA HIGH
22 BUT WHICH WERE PURCHASED BY ROBERT BURROUGHS?
- 23 A NO, THERE ARE NONE.
- 24 Q NOW, ARE THERE ANY MONEY ORDERS AMONG THE VARIOUS
25 DOCUMENTS?

1 A YES, THERE ARE.

2 Q AND APPROXIMATELY HOW MANY MONEY ORDERS ARE THERE?

3 A THERE ARE FOUR MONEY ORDERS.

4 Q NOW, MR. BURROUGHS, IN THESE CHECKS AND MONEY ORDERS THAT
5 YOU HAD, DID YOU RECEIVE ANY CASH ALONG WITH THAT?

6 A YES, I DID.

7 Q DID YOU ACTUALLY PHYSICALLY RECEIVE THE CURRENCY?

8 A NO, I DID NOT.

9 Q CAN YOU TELL US FIRST, HOW MUCH CURRENCY WAS MADE PART OF
10 THIS TRANSACTION?

11 A IT WAS \$24,000.

12 Q DID THAT \$24,000 EVER PHYSICALLY COME INTO YOUR
13 POSSESSION?

14 A WELL, IT WAS DEPOSITED INTO MY ACCOUNT.

15 Q BY WHOM?

16 A BY MS. HIGH.

17 Q HOW DID YOU LEARN OF THIS DEPOSIT?

18 A WELL, I MEAN, IT WAS DEPOSITED AT MY DIRECTION. THE
19 CLOSING TOOK PLACE. IT WAS LATE, I WOULD SAY 5:00, 5:30, 6:00
20 O'CLOCK CLOSING. MY OFFICE IS LOCATED AT A BRANCH BANK THAT
21 REMAINED OPEN UNTIL EIGHT O'CLOCK. I DID NOT, NUMBER ONE, WANT
22 TO HAVE THAT TYPE OF CASH IN MY OFFICE OVERNIGHT AND SO I
23 DIRECTED MRS. -- BEFORE I MADE DISBURSEMENTS I SAID I CAN'T
24 COUNT THIS, BUT IF YOU GO TO THE BANK, IT IS THREE BLOCKS FROM
25 HERE, YOU MAKE THE DEPOSIT. I'LL CONFIRM THAT THE MONEY IS

1 THERE AND THEN I'LL MAKE DISBURSEMENTS.

2 Q AND HOW DID YOU PHYSICALLY RECEIVE A REPORT THAT THE MONEY
3 HAD BEEN PUT INTO THE BANK?

4 A I WOULD RECEIVE A DEPOSIT SLIP FROM MY BANKING
5 INSTITUTION.

6 Q AT THE TIME THAT YOU GAVE THESE INSTRUCTIONS TO MRS. HIGH,
7 WERE YOU IN THE MIDST OF THE CLOSING?

8 A THAT IS CORRECT, YES.

9 Q DURING THE COURSE OF THE CLOSING, DID MRS. HIGH LEAVE AND
10 RETURN?

11 A YES, SHE DID.

12 Q DID SHE PROVIDE YOU WHEN SHE RETURNED ANY EVIDENCE THAT
13 THE \$24,000 HAD BEEN DEPOSITED INTO THE BANK?

14 A WELL, IT WAS NOT JUST THE 24,000 BUT THE ENTIRE PROCEEDS
15 AMOUNT.

16 Q YOU MEAN ALL OF THESE ITEMS?

17 A THAT'S CORRECT.

18 Q SO YOU RECEIVED THE DEPOSIT SLIP?

19 A THAT'S CORRECT.

20 Q IF I MAY SEE 117-B, PLEASE, SIR, THE CHECKS.

21 A OKAY.

22 Q ONE OF THE DOCUMENTS INCLUDED AMONG GOVERNMENT'S 117-B, IS
23 THAT A DEBIT TRANSACTION WITH THE BANK SHOWING THE DEPOSIT OF
24 MONEY?

25 A THAT'S CORRECT.

1 Q FOR HOW MUCH, CAN YOU TELL LOOKING AT THE DOCUMENT?

2 A TWENTY-FOUR THOUSAND DOLLARS.

3 Q AND IS THERE A DEPOSIT SLIP ON YOUR ESCROW ACCOUNT THAT IS
4 PART OF GOVERNMENT'S EXHIBIT 117-B?

5 A YES, SIR, THERE IS.

6 Q AND WHAT IS THE AMOUNT ON THE DEPOSIT SLIP?

7 A TWO HUNDRED THIRTY-NINE THOUSAND SIX HUNDRED TEN DOLLARS
8 AND SIXTY CENTS.

9 MR. MOYE: YOUR HONOR, I WOULD TENDER AT THIS TIME
10 GOVERNMENT'S 117-B AS A PACKAGE.

11 THE COURT: ANY OBJECTION?

12 MR. ROSEN: YOUR HONOR, I WOULD LIKE TO REQUEST THE
13 OPPORTUNITY TO REVIEW THE DOCUMENTS AFTER COUNSEL HAS FINISHED
14 WITH THIS WITNESS.

15 THE COURT: ALL RIGHT.

16 ALL RIGHT, GO AHEAD.

17 BY MR. MOYE:

18 Q NOW, MR. BURROUGHS, AFTER THE 11TH OF SEPTEMBER 1989, DID
19 YOU RECEIVE FURTHER FUNDS RELATED TO THIS PARTICULAR
20 TRANSACTION?

21 A YES, SIR, I DID.

22 Q CAN YOU TELL US BY LOOKING AT YOUR FILE, GOVERNMENT
23 EXHIBIT 117, WHEN YOU RECEIVED FUNDS AND WHAT FORM THOSE FUNDS
24 TOOK?

25 A IT LOOKS LIKE I RECEIVED THOSE ON JANUARY 8TH, 1990. AND

1 IT LOOKS LIKE

2 Q HOW MUCH DID YOU RECEIVE ON JANUARY THE 8TH?

3 A THIRTY THOUSAND TWO HUNDRED TWENTY-ONE DOLLARS AND THIRTY
4 NINE CENTS.

5 Q AND HOW IS THAT EVIDENCED IN YOUR FILE, MR. BURROUGHS?

6 A I HAVE COPIES OF THE CHECKS.

7 Q ALL RIGHT. AND DO YOU ALSO HAVE A RECEIPT, A COPY OF A
8 RECEIPT THAT YOU --

9 A YES, I DO. THAT'S THE RECEIPT AND THAT'S THE CHECKS.

10 Q NOW, MR. BURROUGHS, I HAND YOU GOVERNMENT EXHIBIT 117-C
11 AND ASK YOU, SIR, TO TAKE A LOOK AT THIS AND TELL US, IDENTIFY
12 GOVERNMENT'S 117-C FOR US?

13 A THESE, AGAIN, ARE COPIES OF THE CHECKS THAT I RECEIVED.

14 Q NOW, THE CHECKS, THE COPIES OF THE CHECKS, DID YOU RECEIVE
15 THOSE FROM THE BANK OR DID YOU PHYSICALLY COPY THEM AND
16 MAINTAIN THEM IN YOUR FILE?

17 A I BELIEVE I HAD COPIES OF THESE IN MY FILE.

18 Q ALL RIGHT, SIR. AND THE RECEIPT, IS THAT RECEIPT PART OF
19 YOUR ORDINARY PRACTICE?

20 A YES, SIR, IT IS.

21 Q NOW, MR. BURROUGHS, THOSE CHECKS, HOW MANY CHECKS ARE
22 THERE THAT YOU RECEIVED?

23 A FIVE CHECKS.

24 Q AND ARE THEY DRAWN ON HOW MANY DIFFERENT FINANCIAL
25 INSTITUTIONS?

1 A ON FOUR.

2 Q WHAT WAS THE LARGEST AMOUNT?

3 A EIGHT THOUSAND DOLLARS.

4 Q AND THE SMALLEST?

5 A WELL, THERE IS A PERSONAL CHECK FOR TWO TWENTY-ONE
6 THIRTY-NINE.

7 Q LET ME ASK YOU, MR. BURROUGHS, IF THE CHECKS ARE ALL DATED
8 ON THE SAME DATE?

9 A NO, THEY ARE NOT.

10 Q WHAT ARE THE DATES ON THE CHECKS?

11 A JANUARY 8TH, NOVEMBER 15TH, AND IT LOOKS LIKE DECEMBER
12 15TH.

13 Q AND HOW MANY CHECKS ON JANUARY 8TH?

14 A THERE ARE TWO CHECKS. WELL, TWO CHECKS AND THE PERSONAL
15 CHECK ARE ALL DATED JANUARY 8TH, 1990.

16 Q AND THESE CHECKS THAT YOU RECEIVED, MR. BURROUGHS, DID
17 THEY APPLY TO THE TRANSACTION INVOLVING 4070 CASCADE ROAD?

18 A THEY DID.

19 Q CAN YOU TELL US HOW AND FOR WHAT THEY WERE APPLIED?

20 A OKAY. THEY WERE APPLIED TO -- THE SELLER TOOK BACK A
21 PROMISSORY NOTE THAT WAS DUE AND PAYABLE, AND SO THEY WERE
22 APPLIED TO PAY THE SELLER IN FULL ALONG WITH PAYING SOME MORE
23 LIENS, SOME LIENS AGAINST THE PROPERTY.

24 Q HOW DID YOU GET THOSE CHECKS?

25 A I RECEIVED THEM FROM MRS. HIGH.

1 Q AND DID SHE PHYSICALLY DELIVER THEM TO YOU?

2 A AS FAR AS I CAN RECALL.

3 Q THE RECEIPT THAT IS PART OF GOVERNMENT'S 117-C, WHO IS THE
4 RECEIPT MADE TO?

5 A VIRGINIA HIGH.

6 MR. MOYE: YOUR HONOR, I TENDER GOVERNMENT'S 117-C.

7 THE COURT: ANY OBJECTION?

8 MR. ABBOTT: NO OBJECTION.

9 THE COURT: DO YOU WANT TO LOOK AT THEM?

10 MR. ROSEN: YEAH, I WOULD LIKE TO.

11 THE COURT: ALL RIGHT.

12 MR. MOYE: MAY I HAVE A MOMENT, YOUR HONOR?

13 THANK YOU, YOUR HONOR. I HAVE NO FURTHER QUESTIONS
14 OF MR. BURROUGHS.

15 THANK YOU, SIR.

16 THE COURT: MR. MORRISON?

17 CROSS-EXAMINATION

18 BY MR. MORRISON:

19 Q MR. BURROUGHS, MY NAME IS BILL MORRISON AND I REPRESENT
20 GEORGE HIGH IN THIS PARTICULAR CASE.

21 DO YOU KNOW GEORGE HIGH?

22 A YES, SIR, I DO.

23 Q THIS TRANSACTION FOR THIS PIECE OF REAL ESTATE AT CASCADE
24 ROAD, WAS MR. HIGH PRESENT DURING ANY OF THESE TRANSACTIONS?

25 A I CAN'T RECALL. I MEAN, I DON'T RECALL HIS PRESENCE. HE

1 MAY HAVE POSSIBLY BEEN THERE. I CAN'T REMEMBER.

2 Q LET'S GO BACK TO SOME OF THE THINGS THAT YOU TESTIFIED TO
3 EARLIER. YOU SAID THAT YOU HAD BEEN LICENSED TO PRACTICE SINCE
4 1978?

5 A THAT'S CORRECT.

6 Q HAS YOUR PRACTICE ALWAYS CONCENTRATED IN THE AREA OF REAL
7 ESTATE TRANSACTIONS?

8 A YES, SIR, IT HAS.

9 Q HAS IT ALWAYS BEEN MAINLY HERE IN THE METRO ATLANTA AREA?

10 A IT HAS.

11 Q AND YOU HAVE CLOSED ABOUT SEVEN OR EIGHT HUNDRED LOANS PER
12 YEAR OVER THAT PERIOD OF TIME?

13 A YES, SIR.

14 Q NOW, IN THIS PARTICULAR CASE WHEN YOU ACTED AS THE CLOSING
15 ATTORNEY IN THIS CASE, WHEN THE CASE -- WHEN THE TRANSACTION
16 WAS COMPLETED, WHEN WOULD THAT DATE HAVE BEEN?

17 A IT WOULD HAVE BEEN -- WELL, I MEAN, THE CLOSING ITSELF
18 WOULD HAVE BECOME COMPLETED ON THE 11TH OF SEPTEMBER. IT IS
19 JUST A SINGLE TRANSACTION.

20 Q OKAY. BUT YOU DID RECEIVE SOME CHECKS AFTER THAT?

21 A THAT'S CORRECT. THE SELLER WAS OWED SOME ADDITIONAL MONEY
22 BECAUSE OF THE PROMISSORY NOTE AND -- SO THAT SELLER IS BEING
23 PAID IN FULL.

24 Q NOW, WHEN YOU DID THAT, WOULD YOU SAY THAT IS A NORMAL
25 PART OF A REAL ESTATE CLOSING OR A REAL ESTATE TRANSACTION, AND

1 BY THAT I MEAN FOR THE CLOSING ATTORNEY TO HANDLE THE
2 ADDITIONAL FUNDS TO PAY ON A PROMISSORY NOTE?

3 A WELL, I HAVE SEEN IT BOTH WAYS. I THINK WHEN THE HOLDER
4 OF MORTGAGE IS AN INDIVIDUAL IT IS PROBABLY BEST THAT YOU HAVE
5 AN ATTORNEY GET INVOLVED SIMPLY TO MAKE SURE THAT THAT DEBT IS
6 CANCELLED OF RECORD.

7 Q OKAY. AND YOU INDICATED THAT SOME OF THE CHECKS THAT WERE
8 DELIVERED TO YOU BY MRS. HIGH WERE MADE PAYABLE TO YOU?

9 A THAT'S CORRECT.

10 Q DID YOU INSTRUCT HER TO DO THAT?

11 A I DON'T RECALL INSTRUCTING HER TO DO THAT.

12 Q I ASSUME THAT YOU TOOK THOSE CHECKS AND THAT THOSE CHECKS,
13 THAT MONEY WAS, AS YOU SAID, DEPOSITED INTO YOUR ACCOUNT?

14 A RIGHT. RIGHT. IT IS NOT AN UNCOMMON PRACTICE. I MEAN,
15 SOME PEOPLE WILL MAKE THE FUNDS PAYABLE TO THE CLOSING
16 ATTORNEY. OFTENTIMES WE TELL THE PEOPLE TO MAKE THE CHECK
17 PAYABLE TO THEMSELVES SO THAT IF THE CLOSING DOESN'T GO THROUGH
18 THEY CAN JUST TAKE IT BACK TO THE BANK OR ENDORSE IT BACK OR
19 WHATEVER.

20 Q NOW, ARE YOU FAMILIAR WITH THE TERM CASH TRANSACTION
21 REPORTING?

22 A YES, SIR, I AM.

23 Q WOULD YOU TELL THE JURY WHAT YOUR UNDERSTANDING OF THAT
24 TERM IS, PLEASE?

25 A MY UNDERSTANDING IS THAT IF ANY DEPOSIT, ANY CASH DEPOSIT

1 IS IN EXCESS OF A CERTAIN AMOUNT INVOLVING A SINGLE
2 TRANSACTION, THEN A CASH REPORTING NEEDS TO BE FILED.

3 Q OKAY. ARE YOU FAMILIAR WITH A TERM KNOWN AS STRUCTURING A
4 FINANCIAL TRANSACTION?

5 A NO, I'M NOT.

6 Q NOW, WHEN THIS REAL ESTATE TRANSACTION WAS COMPLETED, DID
7 YOU REPORT TO ANY FEDERAL LAW ENFORCEMENT AGENCY SUCH AS THE
8 F.B.I. OR THE INTERNAL REVENUE SERVICE OR ANY OTHER LAW
9 ENFORCEMENT AGENCY, DID YOU REPORT TO THEM THE NATURE OF THIS
10 TRANSACTION AND WHO THE PARTICIPANTS WERE?

11 A NO, I DID NOT.

12 Q BASED ON YOUR UNDERSTANDING AS THE CLOSING ATTORNEY, DID
13 YOU COMPLY WITH ALL APPLICABLE FEDERAL AND STATE LAWS AS THEY
14 RELATE TO REAL ESTATE TRANSACTIONS OF THIS NATURE?

15 A YES, SIR.

16 Q NOW, WHEN MRS. HIGH DELIVERED THE CHECKS TO YOU AND YOU
17 SAID THAT THERE WERE APPROXIMATELY 33 CHECKS DRAWN ON SIX
18 DIFFERENT BANKS, DID YOU HAVE ANY CONVERSATIONS WITH HER ABOUT
19 THE NUMBER OF CHECKS OR ABOUT THE FACT THAT THEY WERE DRAWN ON
20 DIFFERENT BANKS?

21 A NO, I DID NOT.

22 Q DID YOU FIND THAT THERE WAS ANYTHING UNUSUAL ABOUT THAT IN
23 THE CONTEXT OF THE REAL ESTATE TRANSACTIONS THAT YOU HAVE
24 HANDLED SINCE 1978?

25 A WELL, I MEAN -- NO, I HAVE SEEN THEM BEFORE. I HAVE SEEN

1 FOLKS COME WITH MONEY ORDERS BEFORE.

2 Q AND CHECKS?

3 A AND CHECKS.

4 Q AND CASH?

5 A AND CASH.

6 Q THERE WASN'T ANYTHING ABOUT THIS TRANSACTION THAT TOOK IT
7 OUT OF THE ORDINARY COURSE AS FAR AS YOU WERE CONCERNED; IS
8 THAT CORRECT?

9 A THAT'S CORRECT.

10 Q NOW, YOU SAID THAT THERE WAS \$24,000 IN CASH THAT WAS
11 DEPOSITED IN YOUR ACCOUNT; IS THAT CORRECT?

12 A THAT'S CORRECT.

13 Q AND WAS THAT MONEY DISBURSED TO WHOM?

14 A THAT MONEY WAS USED TO DISBURSE THE ITEMS THAT HAD TO BE
15 PAID ACCORDING TO THE CLOSING STATEMENT, TO PAY OFF THE
16 MORTGAGE ON THE -- IT ALL WENT TO PAY OFF MORTGAGES ON THE
17 HOUSE THAT WAS BEING PURCHASED, TO PAY OFF LIENS AND
18 ENCUMBRANCES THAT WERE AGAINST THE HOUSE.

19 Q DID THE SETTLEMENT DOCUMENTS THAT YOU HAVE, DO THEY
20 ACCURATELY REFLECT ALL OF THE CASH AND ALL OF THE CHECKS AND
21 ALL OF THE MONEY ORDERS THAT WERE DEPOSITED INTO YOUR REAL
22 ESTATE ESCROW ACCOUNT AND THEN DISBURSED BY YOU?

23 A IT DOES.

24 Q AND ALL OF THOSE WERE ACCOUNTED FOR ON THE SETTLEMENT
25 STATEMENT; IS THAT CORRECT?

1 A THAT'S CORRECT.

2 Q AND IT IS CLEAR FROM LOOKING AT YOUR RECORDS AND THERE WAS
3 NO MISUNDERSTANDING AS TO WHO DELIVERED THE CHECKS TO YOU?

4 A THAT'S CORRECT.

5 Q AND WHO DELIVERED THE CASH?

6 A CORRECT.

7 Q AND WHO YOU DISBURSED THE FUNDS TO?

8 A CORRECT.

9 Q AND DO YOU KNOW WHETHER OR NOT MRS. HIGH KNEW WHETHER OR
10 NOT YOU WOULD KEEP COPIES OF ALL OF THE CHECKS AND COPIES OF
11 THE SETTLEMENT STATEMENTS AND THOSE THINGS?

12 A NO, I DON'T KNOW. I MEAN, I THINK SHE WOULD HAVE ASSUMED
13 THAT I WOULD KEEP COPIES OF THE SETTLEMENT STATEMENT.

14 Q WHEN YOU DO A CLOSING YOU ACTUALLY HAVE THE PARTIES -- AND
15 EVERYONE SITS AROUND A TABLE, DO THEY NOT?

16 A THAT'S CORRECT.

17 Q AND YOU BASICALLY SHUFFLE PAPERS BACK AND FORTH BETWEEN
18 THE PURCHASER AND THE SELLER, AND YOU AS THE CLOSING ATTORNEY
19 ARE DIRECTING THE TRAFFIC; IS THAT CORRECT?

20 A THAT'S CORRECT.

21 MR. MORRISON: THOSE ARE ALL THE QUESTIONS I HAVE.
22 THANK YOU, MR. BURROUGHS.

23 THE COURT: MR. ABBOTT?
24
25

1 CROSS-EXAMINATION

2 BY MR. ABBOTT:

3 Q MR. BURROUGHS, MY NAME IS MICHAEL ABBOTT. IN FACT, WE
4 HAVE MET, HAVE WE NOT?

5 A YES, WE HAVE.

6 Q AND I HAVE KNOWN YOU FOR YEARS AND YOU HAVE KNOWN ME FOR
7 YEARS AS PROFESSIONAL COLLEAGUES?

8 A THAT IS CORRECT.

9 Q AND IT WOULD BE FAIR TO SAY, WOULD IT NOT, THAT YOU
10 BASICALLY, IN ESSENCE, ARE A SPECIALIST IN REAL ESTATE, ARE YOU
11 NOT?

12 A THAT'S CORRECT.

13 Q AND IN THE ATLANTA LEGAL COMMUNITY YOU WOULD BE KNOWN
14 BASICALLY AS A REAL ESTATE ATTORNEY AND HAVE BEEN KNOWN FOR
15 MANY YEARS?

16 A THAT'S CORRECT.

17 Q SO CERTAINLY SOMEBODY WHO CAME TO YOU TO ENGAGE YOU IN
18 REAL ESTATE SERVICES, WOULD BE -- IT WOULD NOT BE SURPRISING
19 BECAUSE OF YOUR REPUTATION, ISN'T THAT CORRECT?

20 A THAT'S CORRECT.

21 Q AND ISN'T IT TRUE THAT THIS IS NOT THE ONLY TRANSACTION
22 THAT YOU HAVE CLOSED WITH THE HIGHS OF HIGH REALTY?

23 A THAT IS CORRECT.

24 Q THAT YOU HAVE DONE REAL ESTATE CLOSINGS WITH THEM OVER THE
25 YEARS, HAVE YOU NOT?

1 A THAT'S CORRECT.

2 Q OKAY. NOW, I BELIEVE YOU SAID THAT IT WOULD NOT BE
3 UNUSUAL IN CLOSINGS THAT YOU HAVE DONE FOR PEOPLE TO MAKE
4 CHECKS PAYABLE TO THE CLOSING ATTORNEY?

5 A CORRECT.

6 Q AND, IN FACT, THAT WAS DONE IN THIS CASE, WAS IT NOT?

7 A CORRECT.

8 Q AND I BELIEVE YOU ALSO SAID THAT YOU OFTEN DIRECT THAT
9 CHECKS, WHAT, BE MADE PAYABLE TO THE BUYER, IS THAT WHAT YOU
10 SAID?

11 A THAT'S CORRECT.

12 Q OKAY. AND THAT WAS ALSO DONE IN THIS CASE, WAS IT NOT?

13 A CORRECT.

14 Q AND I BELIEVE MR. MOYE SHOWED YOU A CHART, DID HE NOT,
15 SOMETHING LIKE THIS?

16 A YES.

17 Q OKAY. WHICH SHOWS THE CASHIER'S CHECKS THAT WERE USED TO
18 PURCHASE 4070 CASCADE ROAD; CORRECT?

19 A THAT'S CORRECT.

20 Q AND IT SHOWS THE PURCHASER, THE DAY, WHO IT IS MADE
21 PAYABLE TO, THE AMOUNT, BANK, AND THE CHECK NUMBER; IS THAT
22 CORRECT?

23 A (NODDING HEAD IN THE AFFIRMATIVE.)

24 Q IN FACT, YOU ARE LISTED AS PURCHASER ON A NUMBER OF THOSE
25 CHECKS?

1 A I DON'T --

2 OKAY. I NEED TO SEE THE CHECKS THEMSELVES BECAUSE I
3 WASN'T AWARE THAT I WAS LISTED AS PURCHASER ON ANY OF THOSE
4 CHECKS.

5 THE CLERK: THEY ARE RIGHT HERE, MR. ABBOTT.

6 THE COURT: 117-B.

7 A ON WHICH CHECKS?

8 Q WELL, FOR EXAMPLE, -- HERE, LET ME JUST GIVE IT TO YOU.

9 A OKAY. NO, IT'S -- ON THE CHECK IT SAYS PAY TO THE ORDER
10 OF ROBERT BURROUGHS, AND IT SAYS -- I DON'T BELIEVE I'M LISTED
11 AS THE PURCHASER ON THOSE CHECKS.

12 Q YOU ARE LISTED AS THE PURCHASER ON THE CHART MR. MOYE
13 SHOWED YOU, ARE YOU NOT?

14 A YES, I AM.

15 Q AND ARE YOU LISTED ON THE CHECK -- WHICH CHECK ARE YOU
16 REFERRING TO?

17 A WELL, IT LOOKS LIKE THESE, THE FIRST TWO, THE FOUR
18 NINETY-NINE TRAVELER'S EXPRESS MONEY ORDER -- I'M NOT THE
19 PURCHASER ON THE CHECKS.

20 Q EVEN THOUGH YOU ARE LISTED ON THIS CHART AS THE PURCHASER?

21 A THAT IS CORRECT.

22 Q WHAT YOU ARE SAYING IS YOU DID NOT PURCHASE THAT CHECK?

23 A I'M SAYING I DID NOT PURCHASE THEM NOR AM I LISTED AS THE
24 PURCHASER.

25 Q OKAY. DO YOU KNOW WHY YOU WERE LISTED AS THE PURCHASER ON

1 THIS CHART, DOES YOUR NAME APPEAR ON THE CHECK IN ANY FORM?

2 A YES, MY NAME, IT SAYS PAY TO THE ORDER OF ROBERT

3 BURROUGHS, AND IT HAS THE SIGNATURE OF VIRGINIA HIGH. AND I

4 ENDORSED THE CHECK ON THE BACK SINCE IT WAS PAYABLE TO ME.

5 Q AND BASED ON THAT, YOU WERE LISTED AS THE PURCHASER ON THE

6 CHART THAT MR. MOYE SHOWED YOU?

7 A I SUPPOSE SO.

8 Q SO APPARENTLY ONE CAN BE LISTED AS PURCHASER EVEN THOUGH,

9 IN FACT, ONE DID NOT ACTUALLY PHYSICALLY GO AND PURCHASE THE
10 CHECK?

11 A WELL, I MEAN, I'M JUST NOT LISTED AS PURCHASER ON THE
12 CHECK, MR. ABBOTT.

13 Q AND, IN FACT, YOU DID NOT PURCHASE THE CHECK?

14 A NO, I DID NOT.

15 Q BUT ON THE CHART I SHOWED YOU, YOU WERE LISTED AS
16 PURCHASER, WERE YOU NOT?

17 A THAT'S CORRECT.

18 Q OKAY. NOW, IS IT UNUSUAL THAT YOU MIGHT RECEIVE CASHIER'S
19 CHECKS AT A CLOSING?

20 A NO, IT IS NOT.

21 Q AND I BELIEVE YOU SAID THAT SOMETIMES YOU MAY KEEP COPIES,
22 SOMETIMES THE PERSON WHO OBTAINED THE CHECK MAY KEEP COPIES; IS
23 THAT CORRECT?

24 A THAT'S CORRECT.

25 Q IS IT TRUE THAT THE BANK WOULD ALSO KEEP A COPY FOR THEIR

1 RECORDS?

2 A (NODDING HEAD IN THE AFFIRMATIVE.)

3 Q SO IF THE PERSON WHO BOUGHT THE CHECK, FOR EXAMPLE, WERE
4 TO DESTROY THEIR RECORDS, THE BANK WOULD ALWAYS HAVE A COPY OF
5 THAT CHECK ANYWAY, WOULD THEY NOT?

6 A THAT'S CORRECT.

7 Q SO BY -- IF SOMEONE WERE TO DESTROY THE RECORD THEMSELVES,
8 THAT WOULDN'T DESTROY ALL THE RECORDS OF THOSE CHECKS, THE BANK
9 WOULD STILL HAVE THEIR COPY, WOULD THEY NOT?

10 A CORRECT.

11 Q AND IF I UNDERSTOOD YOUR TESTIMONY, YOUR DIRECT TESTIMONY
12 WITH MR. MORRISON, IT WAS THAT THERE WAS NOTHING ABOUT THIS
13 TRANSACTION THAT SUGGESTED TO YOU THAT THERE WAS ANY
14 ILLEGALITY; IS THAT NOT CORRECT?

15 A THAT'S CORRECT.

16 MR. ABBOTT: THOSE ARE MY QUESTIONS, YOUR HONOR.

17 THE COURT: MR. ROSEN?

18 MR. ROSEN: JUDGE, COULD I HAVE A FEW MOMENTS,
19 PLEASE? I WOULD LIKE TO LOOK THROUGH THE PAPERWORK.

20 THE COURT: DO YOU HAVE ANY QUESTIONS, MR. AXAM?

21 MR. AXAM: I HAVE NO QUESTIONS, YOUR HONOR.

22 THE COURT: DO YOU WANT TO STEP OUT -- HOW LONG ARE
23 YOU GOING TO BE?

24 MR. ROSEN: I WOULD LIKE TO LOOK AT THE FILES, IF I
25 MAY.

1 MR. ROSEN: WE NEED THE JURY.

2 THE COURT: I GUESS WE BETTER HAVE THEM IF WE'RE
3 GOING TO HAVE A TRIAL.

4 MR. MOYE: YOUR HONOR, YOU HAVE ALREADY ADMITTED A.

5 THE COURT: YES.

6 (JURY PRESENT)

7 (WITNESS RESUMED THE STAND)

8 THE COURT: ALL RIGHT, MR. ABBOTT.

9 CROSS-EXAMINATION (CONTINUED)

10 BY MR. ABBOTT:

11 Q ALL RIGHT, MR. BURROUGHS, I JUST HAVE A VERY FEW MORE
12 QUESTIONS FOR YOU.

13 AS A LAWYER, MR. BURROUGHS, YOU WOULD BE AWARE, WOULD
14 YOU NOT, THAT UNDER FEDERAL LAW IF A BANK RECEIVES A DEPOSIT OF
15 MORE THAN \$10,000 IN CASH, THAT TRIGGERS A CERTAIN REPORTING
16 REQUIREMENT THAT THEY HAVE TO MAKE?

17 A YES, SIR.

18 Q DID YOU KNOW THAT?

19 A UH-HUH.

20 Q NOW, MY UNDERSTANDING OF YOUR TESTIMONY ON DIRECT IS THAT
21 AT THIS PARTICULAR CLOSING MS. HIGH BROUGHT \$24,000 IN CASH TO
22 THE CLOSING; IS THAT CORRECT?

23 A THAT'S CORRECT.

24 Q AND, IN FACT, YOU DIDN'T WANT TO SPEND THE TIME COUNTING
25 THAT CASH AT THAT TIME OF THE DAY; IS THAT CORRECT?

1 A THAT'S CORRECT.

2 Q BUT YOU, IN FACT, ACTUALLY SAW THE CASH, DID YOU NOT?

3 A CORRECT.

4 Q AND OBVIOUSLY 24,000 IS MORE THAN 10,000, IS IT NOT?

5 A CORRECT.

6 Q AND AT YOUR DIRECTION, AS I UNDERSTAND IT, YOU DIRECTED
7 HER TO GO TO THE BANK AND DEPOSIT THAT MONEY; IS THAT CORRECT?

8 A CORRECT.

9 Q AND TO YOUR KNOWLEDGE, THAT IS EXACTLY WHAT SHE DID; IS
10 THAT CORRECT?

11 A THAT'S CORRECT.

12 MR. ABBOTT: THANK YOU.

13 THE COURT: MR. ROSEN?

14 MR. ROSEN: I HAVE NO QUESTIONS OF THIS WITNESS,
15 JUDGE.

16 THE COURT: MR. AXAM?

17 MR. AXAM: NONE, YOUR HONOR.

18 THE COURT: DOES THE GOVERNMENT HAVE ANYTHING ELSE?

19 MR. MOYE: I HAVE NO FURTHER QUESTIONS OF
20 MR. BURROUGHS.

21 MAY HE BE EXCUSED?

22 THE COURT: ALL RIGHT, MR. BURROUGHS, YOU MAY STAND
23 DOWN AND BE EXCUSED. THANK YOU.

24 LET'S SEE, NOW, YOU BETTER --

25 MR. MOYE: THAT IS HIS FILE, YOUR HONOR. WITH THE