

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MASSACHUSETTS**

IN THE MATTER OF:	.	Case #96-10123
	.	
V & M. MANAGEMENT, INC.	.	Boston, Massachusetts
	.	September 24, 2004
Debtor	.	10:19 a.m.

**TRANSCRIPT OF EVIDENTIARY HEARING ON:
(#839) MOTION OF ALPHONSE MOURAD TO ALLOW ADMINISTRATIVE CLAIM
BEFORE THE HONORABLE JOEL B. ROSENTHAL, JR., J.U.S.B.C.**

APPEARANCES:

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1 (At Tape #1, Index #1671. 10:19 a.m.)

2 CLERK: The Court calls the case of V & M
3 Management, Incorporated, the motion of Alphonse Mourad to
4 allow administrative claim.

5 THE COURT: Please be seated. All right. We're
6 here to try two issues as set forth in my order of the 21st of
7 July: The issue of Mr. Mourad's -- whether Mr. Mourad had
8 cause to file his administrative claim late; and Mr. Mourad's
9 allegations that Mr. Gray administered the estate negligibly,
10 causing an increase in Mr. Mourad's tax liability. Mr. Mourad,
11 are you prepared to proceed?

12 MR. MOURAD: Thank you, Your Honor.

13 THE COURT: Are you prepared to proceed?

14 MR. MOURAD: Yes, I am.

15 THE COURT: Mr. Moore, Ms. Hertz, are you prepared?

16 MR. MOORE: Yeah. For the record, Paul Moore,
17 counsel for Stephen Gray. Yes, Your Honor, we're prepared to
18 proceed.

19 THE COURT: Okay. I have your pre -- pre-trial
20 memos and your modified witness list, 1, 2, 3, 4, 5, 6, 7, 8,
21 9, 10, 11, 12, 13 -- Mr. Mourad, you had listed seventeen
22 witnesses, and Mr. Moore, you had listed two. Is there any
23 change to that list -- either of those lists at this point?

24 MR. MOURAD: Yes, Your Honor. I subpoenaed five and
25 one witness from HUD has already retired, and I have the server

1 here, it's only four witnesses for this trial.

2 THE COURT: All right. So who are the four
3 witnesses, Mr. --

4 MR. MOURAD: Mr. Gray, Stephen Gray, Mr. Howard
5 Cohen, agent from the IRS, Mr. Knospe, and the accountant for
6 Stephen Gray, Craig Jalbert.

7 THE COURT: So Mr. Petro -- I don't know whether
8 it's Mr. or Ms. Petrowski (phonetic), there were two different
9 Cohens, Craigton (phonetic), Gurgy (phonetic), Lipton
10 (phonetic), a HUD representative, Gumble Beacon (phonetic),
11 Tierny Bones (phonetic) -- you're not going to testify?

12 MR. MOURAD: No, I will use -- I want to refer to
13 their exhibits for the records.

14 THE COURT: But you're not going to testify?

15 MR. MOURAD: No.

16 THE COURT: Okay. Mr. Slavin (phonetic) and Buccio
17 (phonetic), those people will not be testifying, is that
18 correct?

19 MR. MOURAD: Correct.

20 THE COURT: Okay. And you have two listed, I -- I
21 believe they were listed as rebuttal witnesses, Mr. Gray and
22 Mr. Jalbert, is that it?

23 MR. MOORE: Yes, Your Honor.

24 THE COURT: Okay, very well. All right. Are you --
25 you -- I'll hear you in an opening statement, if you'd like,

1 Mr. Mourad?

2 MR. MOURAD: Yes, Your Honor. Thank you. My main
3 arguments of this trial today would be one based on a tax cut
4 allocation and who is -- who does it belong to, the sole
5 shareholder who owns a hundred per cent of the stock of V&M
6 Management, and who had ten years of ownership under Section 42
7 to qualify for it. The Trustee was only at that time the
8 manager and he was not the owner and he had the obligation to
9 file for tax credit and have Al Mourad as a joint partner with
10 Beacon Management for them to establish a tax credit.

11 Second, the filing of the tax returns, they were done
12 seventeen, eighteen months late on the profit, and the K-1 was
13 sent to the IRS and to myself, and that's also negligence on
14 the interest and penalty, and I question why normally if there
15 is a profit, the corporation has not reported to a sole owner
16 within thirty days, since he's liable for the capital gain, and
17 (unclear) of costs and disability to owner.

18 Third, I will argue the negligence of Stephen Gray.
19 He did have an obligation to the creditors and to the sole
20 shareholder to get the maximum dollar to satisfy both and be
21 able to have a win-win situation here. In this case, Stephen
22 Gray has created a shell corporation with Howard -- with Beacon
23 Management, and then they -- he singly applied for the tax
24 credit and he brought the tax credit into a shell corporation.

25 THE COURT: Who is "he"?

1 MR. MOURAD: Stephen Gray, the Trustee, I'm sorry,
2 Your Honor.

3 THE COURT: Go ahead and finish, I didn't mean to
4 interrupt you.

5 MR. MOURAD: Also -- I appreciate that, Your Honor.
6 (unclear) my first time (unclear). Also, Stephen Gray
7 (unclear) deliberately from day one. He devalued the property
8 for \$100,000. I have brought an offer for five million five,
9 he did not acknowledge it. I have had an appraisal for 12
10 million dollars. I would demonstrate that in exhibits. I have
11 nothing but money, so if Stephen Gray had worked with me, we
12 wouldn't be here today, and everybody would be compensated, and
13 there would be no need for the creditors to get nine cents on
14 the dollar.

15 So there was clear negligence on the Trustee for his
16 personal gain and his association at the expense of the sole
17 shareholder of V&M Management, and that's fifteen years of my
18 life, Your Honor. I'm indigent today, I have lost everything,
19 and this is a tragic case. I'm a business man, and I felt if
20 they had worked with me, we wouldn't be here today, and this
21 deal could have been consummated for everybody's win situation,
22 including the Mandela residents, which my dream was to have
23 tenant ownership and I was very activist on housing, that's my
24 expertise in thirty years, and that's why I was going to
25 reorganize, make profit, and turn the deed to the tenants for

1 one dollar and good look to them, set up the programs, and we
2 could all be in proud of this policy. And this is what I want
3 to demonstrate today on this -- on the stand.

4 Now do I need to make a statement to the witnesses,
5 Your Honor.

6 THE COURT: No, you'll, the witnesses will testify.

7 MR. MOURAD: Thank you, that's -- I'm --

8 THE COURT: But do you -- are you also going to
9 intro -- there were two issues as I introduce them. One was
10 the negligent administration that you've alleged; increasing or
11 causing to increase your tax liability, and the other is
12 whether you had just cause or cause to file your administrative
13 claim late. You did not, I don't think, address that issue in
14 your opening. Are you going to introduce evidence --

15 MR. MOURAD: Yes, that -- that's a key issue of the
16 trial and the tax credit is the bulk of the trial, is who is
17 the owner -- that definition. Judge Kenner, discretionary on
18 the confirmation plan, appointed Stephen Gray the owner to step
19 in my shoes and to qualify for the tax credit. So if he
20 qualified for the tax credit and he got the benefit of it, and
21 I was kicked out as Judge Kenner in her findings, she says that
22 the creditor -- I'll read it,

23 "Mourad equity -- Mr. Mourad is not a creditor of
24 this estate. He is entitled to no distributions
25 whatsoever from its asset, and nothing in this motion

1 would change that."

2 So therefore, if I was kicked out in '96 and he became the
3 owner and there's no distribution, she acknowledged from the
4 sale to me, then why am I today liable? I just go a levy, Your
5 Honor, of \$300,000 from the IRS.

6 THE COURT: You -- You misunderstood my question,
7 sir. When this case was remanded from the Bankruptcy Appellate
8 Panel, they said there were two issues on appeal that they
9 thought that had to come back. One of them was the alleged
10 negligence. The other one was whether you had cause to file
11 your administrative claim late.

12 MR. MOURAD: Right.

13 THE COURT: You -- There had been a bar date
14 established, you hadn't filed it within that time, and so you
15 have the burden of establishing you had cause to file your
16 administrative claim late, and I'm mentioning that to you now
17 because you -- you didn't mention in your opening, and I just
18 want to make sure that you understand that that's your burden
19 as well.

20 MR. MOURAD: I appreciate that. I did --

21 THE COURT: You do understand that?

22 MR. MOURAD: Yes, I

23 THE COURT: Okay.

24 MR. MOURAD: I did file the claim late. I brought
25 the order from Judge Kenner acknowledging in her final decree

1 closing the case, and I sent a copy to Attorney Paul Moore
2 yesterday, and she acknowledged, and said, "Mr. Mourad filed
3 his claim finally, and all the other proceedings will be closed
4 except for this late administrative claim would be open for
5 trial." So it's a --

6 THE COURT: I don't think -- I don't recall seeing
7 any order --

8 MR. MOURAD: I have it here, Your Honor.

9 THE COURT: -- that -- that deter -- that made a
10 determination that you filed it timely. I think the issue has
11 been an open issue since the case went up to the Bankruptcy
12 Appellate Panel, and as I understand what they said, you filed
13 the motion. The underline pleading here is your motion, Docket
14 #839, motion to allow administrative claim of Alphonse Mourad
15 late, and the Bankruptcy Appellate Panel specifically left the
16 issue and "whether Mourad asserted this claim in a timely
17 fashion."

18 MR. MOURAD: Yes.

19 THE COURT: So it's your burden to establish to me
20 that you either asserted this in a timely fashion, or that you
21 had cause to file it late. That's your burden.

22 MR. MOURAD: Fine. I'm glad you said that.

23 THE COURT: I just want to make sure you understand
24 that.

25 MR. MOURAD: Yes.

1 THE COURT: Fine, Thank you. I'm going to hear --
2 Mr. Moore, you can make an opening now or you can reserve, it's
3 up to you.

4 MR. MOORE: Your Honor, if I might, I'd prefer to
5 reserve it until I hear if Mr. Mourad case to better
6 understands some of the issues.

7 THE COURT: Fine, very good. Mr. Mourad, call your
8 first witness?

9 MR. MOURAD: Craig Jalbert, counselor?

10 **CRAIG JALBERT, DEBTOR'S WITNESS, DULY SWORN**

11 **DIRECT EXAMINATION**

12 **BY MR. MOURAD:**

13 Q. Please state your name?

14 A. Craig Ronald Jalbert.

15 Q. And your occupation and your position for the
16 Trustee, Stephen Gray, and V&M Management?

17 A. I'm an accountant, and at the time I was the -- the
18 firm of Verdolino & Lowey was the accountant to Stephen Gray as
19 -- in his capacity as the Chapter 11 Trustee.

20 Q. Fine. Did you prepare the 1995 taxes for V&M
21 Management?

22 A. Yes.

23 Q. Do you recall you and I having a conversation where
24 the first -- by April -- by somewhere between April and May,
25 June, that regarding -- that I was accused that I'd taken

1 \$922,000, and I would like a credit for it because that loan
2 was prepaid and that's what Judge Kenner based her finding on.
3 Do you -- Do you remember that conversation we had?

4 A. I don't know your -- what year you're talking about
5 and I --

6 Q. 1990 -- 1995. There was a loan to an officer,
7 Alphonse Mourad, of \$920,000 and the fact the Examiner had the
8 records and their accountant had the records of V&M Management
9 and was already done for you, and you said, "I can't give you
10 the credit," do you remember, and I don't have the figures in
11 front of me. I just want to know, did you have those figures,
12 the ledger fees?

13 A. I don't have the figures in front of me either. If
14 you have a piece of paper, I'd be glad to look at it. If
15 you're asking me about another loan from you, I don't have any
16 information on that with me either.

17 Q. Fine. Do you -- Do you remember that 1996 speaking
18 to accountant by the name, Steven Slavin (phonetic)?

19 A. Yes.

20 Q. Do you remember the conversation between you and him?

21 A. Which conversation?

22 Q. The fact that Mr. Sleaven addressed the question is,
23 how to adjust and give me three other accounts and what -- did
24 he provide you with the figures regarding -- giving me a credit
25 for the \$920,000 out that I was accused that I took from the

1 corporation?

2 A. I -- I -- I'm sorry, I don't understand the question.

3 Q. Okay. There was a figure of \$920,000 that was a loan
4 to me as a sole owner, the shareholder, that I took from the
5 corporation.

6 A. When?

7 Q. In 1995.

8 A. So that's money you -- that allegedly you took out in
9 1995?

10 Q. Correct.

11 A. Yes.

12 Q. And that's what the decision of the trusteeship was
13 based on. The fact is, the Examiner did have the figure and he
14 gave me a credit and the year on -- the financial statement
15 which I have here, the corporation had loss that year of
16 \$81,000. That was their own financial statement at the end of
17 the year. December 31, '91.

18 A. '91 or '95?

19 Q. I mean '95.

20 A. I don't recall off the top of my head. If you have
21 something to show me that I can corroborate that, I'd be glad
22 to look at it.

23 Q. Okay. Let me go to '95 -- (pause) 1995, this is --

24 THE COURT: What exhibit are you showing?

25 MR. MOURAD: I'm sorry, Your Honor, Exhibit 1, and

1 it has all of the financial statement from '99 to '95.

2 THE COURT: The financial statement or the tax
3 returns?

4 MR. MOURAD: The tax returns (unclear)

5 **BY MR. MOURAD:**

6 Q. Yes. So the corporation lost \$80,000, am I correct,
7 for that year?

8 A. No.

9 Q. Good, explain it to me. I'm not an accountant.

10 A. That is the net loss on the real estate activities --

11 Q. Okay.

12 A. -- for the corporation that year.

13 Q. All right. Do you show on the statement here that I
14 have taken income for myself, \$926,000?

15 THE COURT: Which year are you looking at fo --

16 MR. MOURAD: 1995, Your Honor, it's the last one.

17 MR. MOORE: Your Honor, I -- I don't want to impinge
18 upon Mr. Mourad's presentation of his case, but he did file a
19 motion to file administrative claim late, and he based that
20 upon certain tax returns that Mr. Jalbert delivered to him. It
21 wasn't clear to me whether it was '96 and '97, but all he
22 attached to that motion was the '97 tax returns. Now we're
23 delving into the '95 tax return. I don't see where that's
24 relevant to the claim he was asserting back in 1998.

25 THE COURT: Well, I'll given him some leeway to

1 establish a foundation. What is the basis of your objection,
2 relevance?

3 MR. MOORE: Yes, Your Honor.

4 THE COURT: Overruled at this point, but you
5 understand the basis of your claim, Mr. Mourad, so I expect
6 you'll tie these -- this all together at some point.

7 MR. MOURAD: Yes, Your Honor.

8 **BY MR. MOURAD:**

9 Q. So what is the bottom line for the corporation for
10 1995 profit versus losses, what did the corporation bottom line
11 come up with for 1995?

12 A. According to this tax return the taxable income was
13 \$229,696, and that was broken out into several different
14 classifications of income.

15 Q. Right. Does that mean that I took that money
16 personally, when you say different classification?

17 A. The -- The source -- The source of that income --

18 THE WITNESS: Your Honor, if you want to follow on
19 page 3 of exhibit -- page 3 of the tax return, which is K-1?

20 THE COURT: I have it.

21 **BY THE WITNESS:**

22 A. The sec -- The first number there, \$80,340, is the
23 loss in 1995 that the corporation had on its rental real estate
24 activities. Line 4A is interest income. That's interest
25 imputed on a loan that you took back in 198 -- originally back

1 in 1984, you took it as a distribution. You changed your mind
2 in 19 -- in 1985 and reclassified that from a distribution to a
3 loan for your own tax purposes.

4 Q. I didn't change my mind, you did the taxes, I wasn't
5 involved.

6 A. No, of '84 and '85.

7 Q. Okay.

8 A. And so in 19 --

9 THE COURT: All right, Mr. Mourad, why don't you
10 step back and leave --

11 MR. MOURAD: Okay, let me take --

12 THE COURT: -- leave the exhibit and step back there
13 and examine the witness from back there.

14 MR. MOURAD: Thank you, thank you.

15 **BY THE WITNESS:**

16 A. So in 1985, Mr. Mourad, you, after refinancing, took
17 out nine -- approximately \$985,000.

18 Q. MmHm.

19 A. We classified that loan that you originally took in
20 1984 to a loan in 198 -- 1985. In an S corporation, in order
21 to maintain the S corporation status, if there is not fair
22 market value terms -- now there was an interest rate
23 attributable to the loan and payment of those interest from, in
24 this case, the shareholder, the corporation, you impute the
25 interest, and your accountant for the years 1985 through 1994

1 prepared tax returns imputing interest.

2 Q. Right.

3 A. Understanding that if you don't pay that interest,
4 that interest gets added to the loan.

5 Q. That's correct.

6 A. So the million dollars compounding interest by the
7 time that we became the Chapter 7 -- Chapter 11 Trustee's
8 accounting in 1996, we're charged with a task of filing all
9 unfiled tax returns. Part of that tax return was to establish
10 how much the imputed interest was. Why I met with your
11 accountant then, a Mr. Monroe, who had excellent documentation
12 as to the build up of that loan over the time, and we computed
13 using the statutory rate, which I don't know what it is off the
14 top of my head right now, but whatever that rate is, multiplied
15 by the loan balance, resulted in \$311,000 income --

16 Q. That's over the --

17 A. -- that -- that gets imputed to -- no, that's this
18 year's, that's 1995's taxable interest income --

19 Q. Right.

20 A. -- to the S corporation that by virtue of it being a
21 conduit to you personally becomes income to you personally.

22 THE COURT: Mr. Jalbert, let me interrupt you a
23 minute.

24 THE WITNESS: Please.

25 THE COURT: Is this Line 4A interest income

1 consistent with the re -- this is the first return you've --
2 the first year you've filed for?

3 THE WITNESS: That's correct.

4 THE COURT: Is this consistent with prior years?

5 THE WITNESS: Every single year from 1985 through
6 1994. I had this exact --

7 THE COURT: Had a number.

8 THE COURT: -- had a number, calculated the same way
9 that I did.

10 THE COURT: Fine, okay. Go ahead. I'm sorry to
11 interrupt.

12 **BY THE WITNESS:**

13 A. The next line item is -- is charitable contributions
14 during 1995, you made a series of disbursements totaling \$1,440
15 to some charitable organizations, which I don't know what they
16 are off the top of my head, those numbers summarized are a net
17 of \$229,696, which was the taxable income of the S corporation,
18 which through the K-1 was then, because it's a -- the S
19 corporation is a conduit, would then be recorded on your
20 personal tax return, and with the characteristics that are
21 associated with each line item of income I just described.

22 Q. I know nothing about accounting. That's my weakest
23 subject, but I know the IRS prepared the -- the taxes for me
24 for 1995, and the way the agent said to me, "You lost \$80,000
25 in '95, and there was interest compounded from the loans prior

1 to 1985, and you owe \$6,800," so obviously, if I had cash taken
2 to my pocket of several hundred thousand dollars on a million
3 dollars, I would be assessed with IRS of \$700,000, and that's
4 how -- that's how they educated me about it. I'll be honest
5 with you, there's no way I could debate you on this. This is
6 one language, my weakest. All I know is the calculation from
7 the cash flow from the --

8 THE COURT: Is there a question?

9 THE WITNESS: Thank you.

10 THE COURT: You said you didn't want to testify.
11 You can take the stand and testify as to things you're
12 competent to testify in, but you -- the witness is on the
13 stand, you ask him questions --

14 MR. MOURAD: Fine.

15 THE COURT: -- he answers you.

16 MR. MOURAD: Okay.

17 THE COURT: You don't make statements you -- you
18 save that for argument.

19 MR. MOURAD: Thank you, Your Honor. I appreciate
20 that.

21 BY MR. MOURAD:

22 Q. So bottom line, do you feel for 1995, was Judge
23 Kenner correct and the Examiner that I took cash to my pocket
24 \$932,000? That's all I want to know, yes, or no? Cash,
25 income, forget the loans and interest. Was there money --

1 A. I -- I don't --

2 Q. -- in the corporation for me to take \$926 (sic) for
3 me, personally, that I have taken? Did the corporation have
4 the money?

5 A. Yes.

6 Q. I took the money?

7 A. Mr. Mourad, I read the Examiner's report and then I
8 did a -- a -- I recreated the banking records of V&M Management
9 Corporation -- myself and my staff -- and I did a lot of the
10 work myself, dating back to 1984. We went account by account,
11 check by check, including 1995, so while off the top of my head
12 I do not know how much money and checks were made out to you,
13 my recollection is that it's actually more than \$900,000 was
14 rec -- was actually paid to you in 1995.

15 Q. Yeah, and those are loans prior back to 1984, but --

16 A. No, in 1995, you had --

17 THE COURT: At what point do you rise, Mr. --

18 MR. MOORE: Your Honor, the --the -- Mr. Mourad is
19 testifying again. I'd ask that he, you know, direct questions
20 to Mr. Jalbert, in a normal fashion.

21 MR. MOURAD: Okay.

22 THE COURT: Sustained. And I'm not sure, very
23 frankly, what relevance an Examiner's report has, whether you
24 agree or disagree with the conclusions that Judge Kenner made
25 when she appointed a Trustee, and obviously you don't agree,

1 that's not before me now. That's something that she decided
2 years ago. I don't know whether it was appealed or not, but
3 it's not before me --

4 MR. MOURAD: Okay, fine, Your Honor.

5 THE COURT: -- so let's move on --

6 MR. MOURAD: Let's move on to 1996.

7 THE COURT: -- to the issues --

8 THE COURT: Are you still on the same Exhibit 1?

9 MR. MOURAD: Yes.

10 (Pause)

11 THE WITNESS: The 1996 tax returns is not in your
12 exhibit.

13 MR. MOURAD: Okay, I'll hand to you this one here.

14 THE COURT: Whoa, whoa, whoa, whoa, before you go
15 giving him something else, is the '96 tax return one of the
16 exhibits that were part of your pre-trial statement? If not,
17 according to the order that was entered, the pre-trial order,
18 they wouldn't be admitted.

19 MR. MOURAD: Okay. Let me take --

20 THE COURT: There's something in Exhibit 1 that
21 appears to be of the 1996 --

22 MR. MOURAD: Right, I put them all together under
23 one exhibit, Your Honor.

24 THE COURT: I understand, but Mr. Jalbert just told
25 me that it wasn't here.

1 THE WITNESS: What you have, Your Honor, is the
2 first page of the SK-1 that would have been sent to Mr. Mourad
3 to report his taxable income to the Commonwealth of
4 Massachusetts. The second page is actually page 2 of the
5 Federal K-1 that would have gone to Mr. Mourad in order for him
6 to complete his federal tax return. Page 3 is the first page,
7 page 4 is the second page of the Massachusetts corporation,
8 it's missing 3 and 4 and all the attachments. The fifth page
9 is Schedule A25, which is a single piece of paper, which is one
10 of the schedules that would go in a complete 1120S tax return.
11 So while there are the -- the --

12 THE COURT: So you're telling me we've got pieces of
13 it but not the whole thing.

14 THE WITNESS: We've got pieces of different things,
15 but not the whole of anything.

16 THE COURT: Okay.

17 MR. MOURAD: Okay. May I ask, Your Honor, maybe I
18 can be helpful? In their pre-trial statement, they have the
19 full taxes for -- in order for 90 -- '95, '96 --

20 THE COURT: So use this.

21 MR. MOURAD: Yeah.

22 MS. HERTZ: Yeah.

23 MR. MOURAD: I think it's more together, to be
24 honest with you.

25 THE COURT: Use this, it's fine.

1 MR. MOURAD: Yes.

2 THE COURT: What exhibit number?

3 MR. MOORE: Your Honor, Exhibit 21 is the '96 tax
4 return, the U.S. tax return.

5 MR. MOURAD: Yes, we'll use this.

6 MR. MOORE: 22 is the K-1 for '96.

7 MS. HERTZ: Your Honor, if we would -- if you would
8 like, we have a binder for you, you could just take this and
9 flip to it.

10 THE COURT: No, this is fine, I don't need any more
11 paper.

12 MS. HERTZ: Okay.

13 THE COURT: But it might be helpful if you left it
14 up there for the witness to use.

15 MR. MOORE: If we may, Your Honor?

16 THE COURT: Sure.

17 MR. MOORE: We brought two copies.

18 THE COURT: See, if you give it to be by the rules,
19 we're supposed to scan it and we don't want to do that. All
20 right, so I'm now looking at a 1996 complete federal income tax
21 return for S corporation, is that right?

22 THE WITNESS: I'm getting this, Your Honor. I -- I
23 -- I -- I think that is, because I'm fairly certain we put the
24 whole thing in. Yes, Your Honor.

25 **BY MR. MOURAD:**

1 Q. Mr. Jalbert, 1996, it's not signed on the bottom,
2 what -- the date when you have completed the filing, am I
3 correct? There's no -- no -- no dates, no signature --

4 A. This is not dated and signed. I know the data was
5 completed --

6 Q. I appreciate it, that's what I want to see.

7 A. The same date as the 1995 return on or about August 1
8 of 1997.

9 Q. August 1, 1997.

10 A. Correct.

11 Q. And what's the profit for 1996 attributed to me as a
12 sole shareholder?

13 A. The total income distributed was \$823,916.

14 Q. And that profit, was that a check sent to me for that
15 amount, since the K-1 was sent to the IRS and for me, did you
16 recall sending me a check for it?

17 A. Profit does not mean cash to the shareholder. This
18 is the profit of the corporation for its operations during
19 1996.

20 Q. So I cannot be held responsible for it by the IRS?

21 A. Oh, I didn't say that. This is V&M Management's
22 corporate income tax return, and during --

23 Q. But it flows through me.

24 A. That's right.

25 Q. Personally.

1 A. Through a K-1 --

2 Q. Am I correct?

3 A. -- the income of this correct through the K-1 will
4 pass through to you as the sole shareholder of V&M Management.
5 The income that passed through to you for which you would be
6 responsible for your own taxes is \$823,916.

7 Q. Okay. So that tax is through me. Also, income --
8 for me I understand, income, losses and credit passes through
9 me, and the S corporation, am I correct?

10 A. All characteristics of income and expense would flow
11 through to the shareholders.

12 Q. How about credits?

13 A. Credits as well.

14 Q. You're not answering the question.

15 A. Credits as well.

16 Q. Credit as well.

17 A. To the extent to where any existed, they would.

18 Q. All right. Then we'll move on to 1997, make this one
19 quick.

20 THE COURT: That would be --

21 THE WITNESS: #19, Your Honor, in the defendant's --

22 MR. MOURAD: Yep, that's it.

23 THE WITNESS: Okay.

24 **BY MR. MOURAD:**

25 Q. I'm interested in just the bottom line, 1997, what

1 was the net profit for V&M Management?

2 A. The net profit for the corporation for 1997 was
3 \$2,289,833.

4 Q. Where did this profit come from?

5 A. From three major categories of income and losses.

6 The first is a one million dollar deduction on account of legal
7 and professional fees paid by the Chapter 11 Trustee during the
8 pendency of the case, they were actually paid in 1997.

9 Q. So those are one million dollars.

10 A. One million dollars is the deduction --

11 Q. Management fee and legal?

12 A. The exact number is --

13 Q. Actual cash.

14 A. -- \$1,006,904.

15 Q. Thank you, I appreciate that.

16 A. The rental --

17 THE COURT: Let the witness finish before you thank
18 him.

19 MR. MOURAD: Thank you.

20 **BY THE WITNESS:**

21 A. The -- The rental income was \$810,687.

22 Q. Let me stop you here. Is that profit, when you say
23 the rental income?

24 A. Rental, income profit, yes.

25 Q. So I did get a K-1 for \$810,00 that was sent to IRS

1 and to me from you, am I --

2 A. That's one of the line items on the K-1 that was
3 sent.

4 Q. I understand.

5 A. Yep.

6 Q. Was that actual cash profit in the bank? Forget the
7 sale. From the subsidies, the HUD subsidies?

8 A. This is an accrual basis taxpayer. The return was
9 calculated in accordance with the Internal Revenue Code and all
10 the attendant regulations for an accrual basis taxpayer. So
11 the net income from real estate activities for 1997 was
12 \$810,687, men -- calculated on an accrual basis.

13 Q. I'm somewhat confused. I think maybe the question
14 is, the end of fiscal December 31st, did V&M Management have
15 \$810,000 cash in their account? That's all I want to know, yes
16 or no?

17 A. No.

18 Q. Did not.

19 A. It had more.

20 Q. Well, I have more from the sale. It's true the
21 transaction happened in '97, one is dated December 31st, I'll
22 get back to that, but I want to know how much profit from the
23 HUD subsidies and from the tenant rents that's income from HUD
24 that was additional to the sale.

25 A. That's the rental income activities --

1 Q. Thank you, so --

2 A. -- for \$810,687.

3 Q. Right, that is --

4 THE COURT: That would be the net -- the net income
5 rental from any source, HUD subsidies, tenant payments, or
6 whatever?

7 THE WITNESS: Correct, and then the associated
8 expenses to the rental activities of the -- and if -- Your
9 Honor, if you flip back through page --

10 THE COURT: The schedule that supports the 810, I
11 assume.

12 THE WITNESS: Exactly, there's that 8825 schedule
13 that we saw in that -- if you find that, they're in sequential
14 order, there's a lot of 6252's, but when you get down to 8220
15 -- 8825, which is about the third or fourth page from the back
16 of #19.

17 THE COURT: I have it, okay, and that ties out.

18 THE WITNESS: That number is all of the -- is a
19 summary of the receipts on an accrual basis and the
20 expenditures again on an accrual basis, netting out to
21 \$810,687.

22 **BY MR. MOURAD:**

23 Q. When you did the financial statement for V&M
24 Management, did you also do a financial statement for HUD,
25 because as an owner, you have to have a certified statement

1 done for HUD separately from V&M Management affairs? Was there
2 one separate one done for HUD as an income and expense?

3 A. For which year?

4 Q. For all years.

5 A. For this year?

6 Q. That's more -- my contract says, they demanded it
7 from me then I have to have a HUD certified audit every year by
8 January the 31st, and if I don't, they will take off the
9 (unclear), so I -- until I submit one. So my accountant had to
10 take a course and be qualified by HUD, and I want to know, was
11 there two sets of financial statements; one for the corporation
12 and one was for HUD audit, certified? Did you have to do that?

13 A. No, I was not required to do that.

14 Q. So because of the bankruptcy you were not allowed to
15 -- you -- you had the discussion, you -- you -- HUD did not
16 demand it from you.

17 A. That's correct.

18 Q. But they demand it from you?

19 A. It -- The -- The -- HUD actually gave a waiver to the
20 Chapter 11 Trustee to filing the 1995 and '96 audit and by the
21 time 1997 came along, we were out of the bankruptcy, case
22 confirmed, there was no requirement to do 1997.

23 Q. HUD usually have a concern on a yearly basis if the
24 Trustee have taken double management fee and extra money was
25 allocated excessive to legal all this, they will basically

1 question that and they will reduce the budget. That's why we
2 have to have a certified audit, because affordable housing
3 cannot afford a million dollars a year in cash for accounting
4 and for lawyers.

5 THE COURT: Mr. Moore?

6 MR. MOORE: Your Honor, could -- could Mr. Mourad be
7 instructed to ask the witness questions.

8 THE COURT: Ask questions.

9 MR. MOURAD: Okay. Thank you, Your Honor.

10 THE COURT: But you want to -- if you want to
11 testify and you're competent --

12 MR. MOURAD: I would.

13 THE COURT: -- if you are --

14 MR. MOURAD: I appreciate it.

15 THE COURT: -- on these issues, you may testify.

16 MR. MOURAD: No, I'll follow through, Your Honor.

17 This is my first time and it's difficult.

18 THE COURT: I -- I understand. Well, this is the
19 second time --

20 MR. MOURAD: It's flowing, I know.

21 THE COURT: Yeah, I understand you get taken up in
22 the moment, but that's not the way we do it.

23 MR. MOURAD: Thank you.

24 THE COURT: So your statement is that although Mr.
25 Mourad may have been required to file these things, HUD did not

1 require it of the Chapter Trustee for '95 and '96, and you sold
2 the property --

3 THE WITNESS: It statutorily does req --

4 THE COURT: -- by the end of '97.

5 THE COURT: -- it requires it. We made a specific
6 application after consulting with the Trustee, under the
7 circumstance, to HUD and got written approval to file a
8 compilation financial statement for 1995 and 1996, which we
9 did; and, again, Your Honor, in 1997, the -- the -- the
10 company, V&M Management, had no obligation to do it.

11 THE COURT: So you did file when it was just a
12 compilation, not an audit?

13 THE WITNESS: Correct, in accordance with the HUD's
14 assent.

15 THE COURT: Okay.

16 **BY MR. MOURAD:**

17 Q. Did you as an -- as a certified public accountant and
18 you have to protect affordable housing to a tax credit, did you
19 have an obligation or Stephen Gray, you and Stephen Gray to
20 file on 1995 the tax credit application in order to bring the
21 asset into V&M? Was that ever taken place in 1995, '96, or
22 '97?

23 A. For the record, I'm not a certified public
24 accountant.

25 Q. It doesn't matter.

1 A. I just want to set the record. I -- I did not file
2 for low income housing tax credits.

3 Q. And the Trustee, Stephen Gray, did not advise you
4 that's an asset to V&M Management and I have to have it on
5 record in order to bring in the equity of 12 million dollars
6 for the creditors and the sole shareholder, we can't let that
7 go?

8 A. As near as I can tell, we did file for low income tax
9 credits and got permission from the state in order to sell the
10 units in 1997.

11 Q. Who filed the tax credit?

12 A. V&M Management or Beacon, I -- someone filed for
13 them.

14 Q. Who filed on behalf of V&M Management?

15 A. It was filed on behalf of V&M Management because
16 income -- low income tax credits are -- are go with the dirt
17 and not the building -- excuse me, with the building and the
18 dirt and not with the -- not with the shareholder. So I don't
19 know who filed for the tax credits, but -- but I did not.

20 Q. According to Section 42, that much I know, of the
21 IRS, the tax credit flows to the owners, sub-chapter S, who is
22 a sole shareholder and he has to be the owner on the deed of
23 the land and the building. The Trustee is only a manager for
24 the owner, although he's a Trustee, being kicked out, but it's
25 not his tax credit because I'm the one who had ten years of

1 ownership, and I'll cite that, we have that citation. Did you
2 know that, Mr. Goodwin (sic)?

3 A. Is there -- is there a question? Is that -- Is that
4 your --

5 Q. No, you answered the question, I'm done with that.
6 We're down to 19 -- one more question and we're done. We'll
7 make this one quick. 19 -- Now in 1998, were you aware -- did
8 the corporation of V&M Management dissolve in 1998, yes or no?

9 A. I -- I don't know.

10 Q. You were not notified?

11 A. No.

12 Q. Did you pay the fee for the corporation in 1998?

13 A. No.

14 Q. You have a requirement. Did you pay a fee for the
15 corporation in 1997?

16 A. No.

17 Q. Did you pay the fee for 1996?

18 A. I -- I didn't.

19 Q. In 1995?

20 A. I personally did not pay these fees.

21 Q. I -- I saw that. Now if you didn't protect the
22 corporation not to be dissolved prior to 1997, you have not
23 protected the tax credit, because if the tax credit as the
24 corporation resolve and the fees not paid, then you lose the
25 ten years' duration and we are all out of luck, Beacon would

1 not get the tax credit, I would not be entitled to it, and
2 Steven Gray would not be entitled to it. Isn't that
3 negligence?

4 A. I don't know.

5 MR. MOURAD: I finished my question, Your Honor.
6 That's all the questions, Judge. That's negligence, because
7 that's an asset. I mean, the whole purpose of tax credit is
8 money.

9 THE COURT: Is there a question for the witness?

10 MR. MOURAD: He answered the question, he did not
11 file, so --

12 THE COURT: He did -- He said he didn't pay the
13 fees, whatever those fees are that you asked him about --

14 THE WITNESS: Do you need any --

15 THE COURT: -- in any of those years.

16 MR. MOURAD: Okay.

17 THE COURT: That was the question and I think that
18 was your answer.

19 MR. MOURAD: Right.

20 THE WITNESS: That's correct, I didn't pay --
21 personally pay those fees.

22 MR. MOURAD: Two more questions and I'm done, thank
23 you.

24 **BY MR. MOURAD:**

25 Q. 1998, August 20th, if I recall, we have it in exhibit,

1 the corporation was dissolved and Judge Kenner dismissed the
2 final decree of the bankruptcy in 1998, am I correct?

3 A. What was your question?

4 Q. Did Judge Kenner dismiss the bankruptcy case in 1998
5 in December?

6 A. No.

7 Q. You did not have a final decree of dismissal?

8 A. She might have issued an order on the final decree,
9 but I don't think she dismissed it.

10 Q. She -- she if I recall, she dismissed it, except for
11 my appeal only pending.

12 A. You're asking a legal question for which I don't
13 know.

14 Q. That's okay, that's not -- okay. Okay. If the
15 corporation dissolved and the assets were sold December 31st,
16 why did you send me a K-1 in 1999 for in excess of \$500,000
17 profit? I honestly don't know where it came from. Could you
18 explain it to me and to the Court?

19 MR. MOORE: Your Honor, objection, assumes a fact
20 not in evidence. I'm not aware that the corporation dissolved
21 and he's asking him to speculate on something with --

22 MR. MOURAD: It's on the witness list, Your Honor,
23 if it helps.

24 THE COURT: What's on the witness list?

25 MR. MOURAD: I -- I could give you the exhibits when

1 the corporation was dissolved and --

2 THE COURT: Well, are you going to introduce
3 evidence?

4 MR. MOURAD: Yes.

5 THE COURT: On the dissolution of the corporation?

6 MR. MOURAD: Yes, it's part of the pre-trial
7 statement, I have it here.

8 THE COURT: Well, that's not evidence. Let me make
9 sure you understand, because you submitted something as in --
10 in your exhibit book: (a), it doesn't make it admitted as an
11 exhibit, and (b), it doesn't make it evidence until it's been
12 admitted. So if you want to show him an exhibit, ask him
13 questions about it, that's fine.

14 MR. MOURAD: Okay.

15 THE COURT: But you're -- Mr. Moore is correct.
16 Right now, there's no foundation for this kind of question.

17 **BY MR. MOURAD:**

18 Q. Do you have in front of you that 1999 --

19 A. I think you took my exhibit back.

20 Q. -- on this part -- this -- this has a full
21 explanation. Could we go back to 1999?

22 THE COURT: You're going to the 1999 tax returns?

23 MR. MOURAD: Yes.

24 THE COURT: That's #16 in the Trustee's book.

25 THE WITNESS: 15.

1 THE COURT: 15? Oh, I'm looking at K-1.

2 BY MR. MOURAD:

3 Q. Okay. What's that net profit that was past through
4 the sole shareholder, Alphonse Mourad, in 1999?

5 A. \$498,468.

6 Q. Where did this profit come from?

7 A. It comes from the -- well, the -- most of the profit
8 comes -- actually all of the profit comes from the carrying on
9 of the sale which took place in 1997, the installment sale.
10 The payments from the buyer came in in 1997, 1998, and 1999.
11 This is, I believe, the final year of the installment sale
12 transaction.

13 Q. And this passes through me as a sole shareholder of
14 the corporation?

15 A. That's correct.

16 Q. So there's additional taxes now liable to the IRS
17 besides the sale of two million eighty-eight in 1997?

18 A. I don't know your personal income tax status.

19 Q. Okay. So that's what that came from, that tax
20 credit?

21 A. It came from the completement of the installment
22 sale, which occurred in 1997. There were cash payments made in
23 1997, 1988, and 1999. The Internal Revenue Code says that you
24 recognize the income as the cash is collected. This return
25 runs out that agreement.

1 Q. But still, my question is, what was paid in 1997 to
2 where (unclear) purchase of V&M assets, tax credit from Beacon
3 Management, was there any contribution as far as buying the
4 assets, or was it bought out of the tax credit allocation? Do
5 you know the answer to that?

6 A. I -- I don't have any -- I don't have any records in
7 front of me to help me understand the transaction right now.

8 Q. Okay.

9 MR. MOURAD: I'm done with that, Your Honor, I'm
10 just limited to this one here.

11 THE COURT: Are you through asking questions of Mr.
12 Jalbert?

13 MR. MOURAD: Yes.

14 THE COURT: Thank you.

15 MR. MOURAD: Thank you, Mr. Jalbert.

16 THE COURT: Mr. Moore, you may examine.

17 MR. MOORE: Your Honor, just for clarification,
18 could I reserve my right to call Mr. Jalbert --

19 THE COURT: Sure.

20 MR. MOORE: -- as part of my case and limit -- limit
21 my examination at this point to some of the issues raised by
22 Mr. Mourad?

23 THE COURT: Absolutely.

24 MR. MOORE: Thank you.

25 **CROSS EXAMINATION**

1 BY MR. MOORE:

2 Q. Mr. Jalbert, when were you retained on behalf of Mr.
3 Gray?

4 A. I believe some -- around -- approximately in May of
5 1996.

6 Q. And what -- what was the scope of the services that
7 you were to provide to Mr. Gray?

8 A. At least initially primarily forensic accounting,
9 work on claims, preferences, and tax return preparation.

10 Q. Okay. And in connection with performing those
11 duties, did you consult with the debtors or any of their
12 representatives?

13 A. Yes.

14 Q. And how many times did you consult with the debtor or
15 its representatives?

16 A. Over ten anyways.

17 Q. Okay. And was that in connection with the tax status
18 of the debtor?

19 A. Yes.

20 Q. And did you also review the debtor's records in
21 connection with performing your services regarding tax matters?

22 A. Yes.

23 Q. And how would you describe the state of the debtor's
24 records?

25 A. Deplorable, some of the worst I've seen.

1 Q. What -- The debtor was a sub-chapter S corporation as
2 of the time you were retained?

3 A. Correct.

4 Q. Do you recall when the debtor first became a sub-
5 chapter S corporation?

6 A. I believe the election was made on January 1 -- or
7 was effective January 1, 1984.

8 Q. And could you tell the Court how one elects sub-
9 chapter S treatment.

10 A. There is a form that gets prepared. It -- You can
11 elect an S -- to be a corporation at any time. It's 2553, it
12 requires the consent of one hundred per cent of the
13 shareholders; any election between the first day of the year
14 and the 75th day of the year is effective as of the first day of
15 the year. Beyond that, it's effective as of the date of the
16 election.

17 Q. And it's the shareholder or shareholders who make
18 that election?

19 A. Correct.

20 Q. Okay. And at all relevant times from and after
21 January 1, 1984, do you know who the sole shareholder of V&M
22 Management was?

23 A. Based upon the tax returns, yes.

24 Q. Okay. And who was that?

25 A. Mr. Alphonse Mourad.

1 Q. Okay. And did -- did that continue throughout the
2 case through the effective date?

3 A. Yes.

4 Q. And do you recall the plan provided that, although
5 the debtor would be -- receive no distributions on account of
6 its equity interest, the debtor would retain its equity
7 interest?

8 A. I remember seeing that provision.

9 Q. So to the best of your knowledge, at all times from
10 January 1, '84 to the present, Mr. Mourad has been sole
11 shareholder of V&M Management?

12 A. To my knowledge, yes.

13 Q. Okay. Under applicable law, is -- how does one
14 terminate a sub-chapter S election?

15 A. There's the voluntary way, which is to file an
16 election to get the consent of the director of the IRS to
17 revoke the S corporation election. The other ways are
18 generally more of an involuntary nature. If you fail to become
19 -- be a small business corporation, meaning if you have more
20 than 75 shareholders, a second class of shareholders, a non-
21 resident alien, or a shareholder who is a non-resident alien,
22 if any of those four things happen, automatically the election
23 is revoked. And the last is to the extent that a corporation
24 that is an S corporation receives more than 25 per cent of its
25 income, 25 per cent -- if the -- if the passive activity income

1 of a S corporation exceeds 25 per cent of the cash receipts,
2 then it's involuntarily terminated.

3 Q. Okay. Well, focusing on the voluntary means, you
4 said you can seek to revoke the election, who do you mean by
5 that?

6 A. The share -- the sole -- the shareholders, whoever
7 they may be in whatever number, would elect to withdraw.

8 Q. And in this case at all times since January 1, 1984
9 to the present, that's been Mr. Mourad, correct?

10 A. To my knowledge, yes.

11 Q. Did you or Mr. Gray do anything whatsoever to alter
12 the debtor's tax status from the date of Mr. Gray's appointment
13 to the present?

14 A. No.

15 Q. Okay. Do you know if Mr. Mourad did anything to
16 alter the tax status of the debtor during that period of time?

17 A. No.

18 Q. Okay. Did you or Mr. Gray do anything to prevent Mr.
19 Mourad from altering the tax status?

20 A. No.

21 Q. And is it the case that up until the effective date
22 of the plan, Mr. Mourad could have altered the tax status or
23 could have attempted to?

24 A. Yes.

25 Q. Okay. And you're not aware that he ever did,

1 correct?

2 A. Correct.

3 Q. As of the time of your retention, were the debtor's
4 tax returns current?

5 A. Yes.

6 Q. And I think you responded to the Court's question
7 that, thereafter, you continued to report federal and state
8 taxes of V&M in the same fashion as the debtor had prior to
9 your retention?

10 A. As far as the characteristics of income, I'm fairly
11 confident that our numbers are correct. I can't say that the
12 prior numbers were correct or not.

13 Q. I was focusing on as a sub-chapter S corporation.

14 A. Yes.

15 Q. Okay. And what returns were filed by you on behalf
16 of Mr. Gray and the estate?

17 A. Federal and state income taxes on an S corporation
18 for 1995, '96, '97, '98, and '99.

19 Q. And was each of those returns prepared consistent
20 with sub-chapter S treatment?

21 A. Yes.

22 Q. And with respect to each of those returns, do you
23 recall when they were filed?

24 A. Within a few days, yes.

25 Q. Okay. And could you tell the Court when those --

1 A. '95 and '96 were filed on or about August 15 of 1997;
2 1997 was filed on or about September 1 to 5 range of 1997 --
3 excuse me, 1998; the 1998 tax return, I believe, was filed in
4 March of 1999; and the 1999 tax return was filed in March of
5 2000.

6 Q. And at the time of filing those returns, did you
7 contemporaneously or shortly thereafter provide the necessary
8 tax information to Mr. Mourad?

9 A. Contemporaneously.

10 Q. And did he at any point throughout the case raise any
11 issue with respect to what you were reporting on the K-1's?

12 A. Not after they were issued.

13 Q. So when was the first time you became aware of the
14 issues we're addressing today?

15 A. We -- there were significant discussions primarily
16 with Mr. Mourad's second accountant, Mr. Slavin, about what the
17 -- the K-1 would look like. We did, we had meetings in the
18 last quarter of 1996 and into 1997, reviewing the information
19 that we had produced, and I gave them *pro forma* K-1s and *pro*
20 *forma* income statements, so there was a discourse going on for
21 approximately six months regarding the substance of the 1995
22 and then 1996 tax returns.

23 Q. Mr. Mourad asserts that Mr. Gray negligently caused
24 him to incur taxes or to increase his taxes. Are you aware of
25 anything that you or Mr. Gray did which would have the effect

1 of causing either of those?

2 A. No.

3 Q. Did you or Mr. Gray take any action to shift tax
4 liability to Mr. Mourad?

5 A. No.

6 Q. To the best of your knowledge, were all necessary tax
7 returns filed by the estate --

8 A. Yes.

9 Q. -- state and federal? Were all taxes paid, all taxes
10 due and owing from the estate?

11 A. Yes.

12 Q. Okay. Were any interest or penalties ever assessed
13 against the estate?

14 A. No.

15 Q. At the time you provided K-1s to Mr. Mourad in each
16 of the relevant years, was -- would Mr. Mourad have been able
17 to timely file returns?

18 A. Yes.

19 Q. And is it your understanding --

20 A. I'm -- I'm sorry. The 1995 and '96 returns he could
21 not have filed on time. The 1997, '98, and '99, he clearly
22 could have.

23 Q. And what was the reason for the relay in 1995 and
24 '96?

25 A. Because it took us over a year to understanding the

1 transaction activity that took place during 1995 and '96 and
2 then working with Mr. Mourad and his experts to hone the
3 numbers as best we could.

4 Q. And then in '95, pre-petition?

5 A. Correct.

6 Q. And would you just explain to the Court a bit about
7 why it's so difficult to reconcile the 1995 records?

8 A. In 1995, there was -- this is -- this is an entity
9 that generally had cash receipts of approximately a million --
10 a million eight per year, \$150,000 a month on average. In
11 going through the 1995 records, there was a million dollars of
12 cash receipts and disbursements going through the records.

13 There were hundred upon thousands of deposits and
14 disbursements, money coming in from American Express, some sort
15 of a check -- money orders, and the normal transaction
16 activity, but there was a plethora of transactions that took a
17 long time what those transactions were to establish a payment
18 that's made to an individual, whether those payments were
19 principal or interest. We looked for agreements to help us --
20 would help us break out those -- those transactions.

21 There was terrible records, and it just was a very
22 lengthy process to understanding the enormous volume of
23 transactions and to properly put them on a tax return.

24 Q. With respect to the tax returns for the post -- for
25 the periods after Mr. Gray's appointment, did you provide those

1 to Mr. Mourad on a timely basis?

2 A. The -- 1996, as I said was -- was, in fact, late, but
3 it was provided as soon as could practically be completed, and
4 then the 1997, '98, and '99 were all timely.

5 Q. And -- and had he secured whatever extensions he
6 needed he would not have incurred any interest and penalties,
7 would he?

8 A. I don't know about 1996, but nin -- I can't speak to
9 his -- to his personal taxes. The -- The information that was
10 required to be filed by the estate was filed in the case of
11 1995 and '96, as soon as practical and in every other year in
12 accordance with the Internal Revenue Code.

13 Q. Okay. And -- And on what basis does the IRS assess
14 penalties interest and penalties on taxpayers?

15 A. There are three levels, three general levels: The
16 first is the failure to file your return on a timely basis; the
17 second is the failure to file -- to pay your taxes on time,
18 including estimates; and the third is, to the extent there is a
19 substantial understatement or some other fraud committed, there
20 would be a fraud penalty associated as well.

21 Q. Okay. Are you aware of anything that you or Mr. Gray
22 did that would have caused Mr. Mourad to incur any significant
23 interest in penalties on his taxes had he filed his tax returns
24 and paid necessary taxes?

25 A. Again, not -- clearly not from '97, '98, and '99. I

1 can't speak to '95 and '96, although, again, we filed those
2 returns under 505(b), there were no penalties assessed, and the
3 service accepted them on -- based on the -- the -- the
4 situation in which Mr. Gray was appointed the Chapter 11
5 Trustee, the records that he assumed under the conditions those
6 -- those were filed and accepted by the service.

7 Q. And focusing in particularly on the '97 return which
8 Mr. Mourad had put particular issue with, had he timely filed
9 his tax returns and paid, would he had incurred any interest
10 and penalties?

11 A. No.

12 Q. Mr. Mourad apparently also alleges that he incurred
13 tax liability by reason of Mr. Gray's failure to pay expenses
14 or debt service. Are you aware of any post-petition expenses
15 that Mr. Gray failed to pay on a timely basis which he was at
16 liberty to pay under applicable bankruptcy law?

17 A. No.

18 Q. Based upon your review of the records, were all su --
19 such expenses timely paid?

20 A. As soon as either allowed by the court, or whatever
21 under any circumstances, yes.

22 Q. I think during his examination of you, you may not
23 have heard it, Mr. Mourad -- when you were speaking of the
24 estates payment of professional fees, Mr. Mourad made a
25 reference to management fees. Based upon your review of books

1 and records of Mr. Gray's trusteeship, did Mr. Gray, other than
2 his fees and expenses as Trustee, take any management fees out
3 of this estate?

4 A. No.

5 Q. Did he take any fees or expenses whatsoever other
6 than what was allowed by the Court?

7 A. No.

8 Q. Do you know anything about tax credits are granted?

9 A. On how they're granted?

10 Q. Yes.

11 A. A -- A little.

12 Q. Based upon the state of affairs during Chapter 11, do
13 you believe there is any basis upon which on a stand-alone
14 basis Mr. Gray would have been awarded substantial federal and
15 state tax credits to rehabilitate this project and pay monies
16 to creditors?

17 A. On the condition that he receive the -- his
18 appointment and about that time, no.

19 Q. So what triggered the significant tax liabilities of
20 Mr. Mourad, based on your knowledge of this case?

21 A. Two issues: One was, of course, the -- the building
22 was originally purchased back in the early 1980s and had been
23 substantially depreciated in the intervening 13, 14, 15 years.
24 When Mr. Gray sold it for a fair market value there is, of
25 course, going to be a large gain. And the second is, this --

1 this loan that Mr. Mourad took back in the early Eighties as
2 well, the compounding of interest over the many, many years,
3 that interest becomes taxable to Mr. Mourad. So those two
4 components are what drove the -- the primary driving of the
5 taxable income and, of course, there was some rental income in
6 1997 as well because Mr. Gray, as he is supposed to, ran the
7 Chapter 11 debtor profitably and not administratively insolvent
8 during the case.

9 Q. You mentioned that there was substantial
10 depreciation. Who does that benefit in a chapter -- sub-
11 chapter context?

12 A. It -- The depreciation, like all other expenses,
13 flows through to the shareholder and they get to take the
14 deduction.

15 Q. They take a deduction off of income?

16 A. Correct.

17 Q. So there were substantial pre-petition reductions?

18 A. Yes.

19 Q. Do you know what they were?

20 A. There are a lot of pieces of property, but the
21 property was at least fifty per cent depreciated by the time
22 that 1997, the sale came -- came about.

23 Q. Do you have any idea what the aggregate number was on
24 both?

25 A. On just one of the buildings alone, \$995,000, it's

1 something akin to \$1,100,000 and maybe a million two.

2 Q. Thank you.

3 MR. MOORE: I have no further questions.

4 THE COURT: Any redirect?

5 MR. MOURAD: Yes, Your Honor.

6 **REDIRECT EXAMINATION**

7 **BY MR. MOURAD:**

8 Q. Did Mr. Gray in 1997, in September, stated to you
9 that he's been appointed the owner of V&M Management, and now
10 he is control of the stocks of V&M Management and that tax
11 credit is flowing to him, so, therefore, I was kicked out -- I
12 wasn't responsible for the taxes for 1996, '97, '98, and '99?
13 That was very clear on the (unclear word) of Judge Kenner.
14 That was a argument of Mourad Owens to discredit Beacon
15 Management and Stephen Gray that they don't quality for tax
16 credit, only the owner qualifies. Did he disclose that to you?
17 Did he tell you I'm the owner today? I've been just appointed.
18 The taxes all come under me, the K1, the profit, the sale, I'm
19 the owner, Mourad's out, he's kicked out?

20 A. I don't understand the question.

21 Q. All right. Did he tell you he's the owner, appointed
22 owner by the Judge in 1997?

23 A. No.

24 Q. Did he disclose that to you?

25 A. No.

1 Q. Then let me ask you another question. If he is
2 appointed owner in '96, would that refer him back to '96, the
3 day he was appointed, that means he was owner on April 1st,
4 1996.

5 THE COURT: Mr. Moore?

6 MR. MOORE: Your Honor, objection. Again, it
7 assumes a fact not in evidence. I've been involved in this
8 case forever, and I don't recall anyone ever appointing Mr.
9 Gray owner. I think Mr. --

10 THE COURT: Well, he's asked the question. Mr.
11 Jalbert has answered it. Move on.

12 **BY MR. MOURAD:**

13 Q. Then you said the financial condition, the property
14 was deplorable condition.

15 THE COURT: No, he didn't say that, he said the
16 books were in deplorable --

17 **BY MR. MOURAD:**

18 Q. The books, I have no problem with that. I have never
19 had one warning ever from HUD which my accountant had to send a
20 certified audit, you didn't, he had, and there wasn't one
21 letter ever in my ownership from HUD saying you misappropriated
22 funds, you have taken money or accusing me, except compliment
23 to me how I was able to rehab 146 units. They kept me thirty
24 per cent below budget, I held off for fifteen years by
25 borrowing money until I finally built up the assets, and 1996 I

1 was going to go to market rent --

2 THE COURT: Let me ask you a question: What is your
3 question to the witness?

4 MR. MOURAD: Well, the question -- that's a false
5 statement when the --

6 THE COURT: It's his opinion. He was asked for an
7 opinion, you can --

8 MR. MOURAD: Then I clarified it.

9 THE COURT: -- you have a right to disagree with his
10 opinion.

11 MR. MOURAD: I disagree with you, because HUD was
12 never, ever --

13 THE COURT: All right.

14 MR. MOURAD: -- questioning my credibility as far as
15 finances.

16 THE COURT: Well, you're testifying again. As I
17 told you before, if you want to testify, you can, but not from
18 there and not under oath. Any -- Any other questions for Mr.
19 Jalbert?

20 MR. MOURAD: That's it. Thank you.

21 THE COURT: Do you have anything further, Mr. Moore?

22 MR. MOORE: No, Your Honor.

23 THE COURT: Thank you, Mr. Jalbert, you may step
24 down, but you cannot be excused because Mr. Moore has reserved
25 the right to recall you on his case in chief.

1 THE WITNESS: Yes, Your Honor.

2 THE COURT: Call your next witness, Mr. -- well,
3 let me you a question. Are there any witnesses here that are
4 only going to take you a few minutes --

5 MR. MOURAD: Yes.

6 THE COURT: -- that we could perhaps excuse before
7 lunch if you took them now?

8 MR. MOURAD: Yes.

9 THE COURT: All right. Why don't you call one of
10 those.

11 MR. MOURAD: Knospe from the IRS.

12 MS. FORBES: Your Honor, may I address the Court?

13 THE COURT: On what point, counsel?

14 MS. FORBES: Louise Forbes for the United States.
15 Your Honor, I'm here as counsel for the witness. Ms. Knospe
16 has been subpoenaed as a witness by the plaintiff. We believe
17 that she will be asked tax return information that she may have
18 been privy to, and we want to -- to ensure that she does not
19 violate any disclosure laws under 26 USC 6103, and --

20 THE COURT: Well, who would be entitled to -- to --
21 to prevent that information from being disclosed?

22 MS. FORBES: Well, there appears to be a -- a
23 concern, and --

24 THE COURT: All right. Well, who -- who are the
25 people -- what's the class of people --

1 MS. FORBES: The two -- The two people that we
2 believe would be -- allow her to testify would be the Trustee
3 and, obviously, Mr. Mourad, as the -- I believe he's the
4 president and only shareholder, and if they would state on the
5 record that they have no objection to her testifying with
6 respect to what knowledge she has on the debtor's tax return
7 information we would be satisfied.

8 THE COURT: Mr. Mourad, do you have any objection to
9 Ms. -- I'm sorry, I don't know how to pronounce it.

10 MS. KNOSPE: Knospe.

11 THE COURT: -- Knospe testifying with respect to the
12 tax return information? I guess it could be either V&M's or
13 potentially yours, because I don't know what questions you're
14 going to ask.

15 MS. FORBES: No, I only represented the Internal
16 Revenue Service with respect to the confirmation hearing at the
17 end and --

18 THE COURT: So it's V&M.

19 MS. FORBES: -- and so it's limited.

20 THE COURT: All right.

21 MS. FORBES: And I'm only authorized to -- to
22 testify with respect to that information.

23 THE COURT: All right. Do you have any problem with
24 the Internal Revenue Service discussing publically in this
25 forum the information with respect to V&M and it's tax returns?

1 MR. MOURAD: No, Your Honor.

2 THE COURT: Mr. Gray?

3 MR. MOORE: Your Honor, we'll defer to Mr. Mourad.

4 That's fine. Whatever he would like to do.

5 THE COURT: So you have no objection either? Fine.

6 Let the record show that both parties have indicated no

7 objection to the Internal Revenue Service officer, Ms. Kno --

8 Knospe, I'll get it before we're done, testifying. Thank you,

9 Ms. Forbes.

10 MS. FORBES: Thank you.

11 THE COURT: Please, step forward.

12 (End of Tape #1, Index #6841. 11:21 a.m.)

13 (Tape #2 continues without interruption, as follows:

14 **MARVIS KNOSPE, DEBTOR'S WITNESS, DULY SWORN**

15 **DIRECT EXAMINATION**

16 **BY MR. MOURAD:**

17 Q. Please state your name?

18 A. Marvis Knospe.

19 Q. Your occupation?

20 A. I'm an attorney with the Internal Revenue Service.

21 MS. ARTESANI: Would you spell your last name,

22 please?

23 THE WITNESS: Sure, it's K-N- as in Nancy -O-S- as

24 in Sam -P- as in Paul -E.

25 **BY MR. MOURAD:**

1 Q. Ms. Knospe, did you object at the confirmation plan
2 September 26, was -- where you -- where you filed an objection
3 on record?

4 A. I went back and looked at the docket in this case and
5 apparently I -- I filed an objection to the plan in mid-
6 September, and I appeared at the confirmation hearing. At the
7 confirmation hearing, I withdrew the objection because at that
8 point it was made clear that the employment taxes that were due
9 from V&M would be paid within the plan.

10 Q. But the plans in September 26 had nothing at all to
11 do with employment of taxes. The confirmation was the tax
12 credit. That's -- That's what you witnessed. The fact is,
13 did you have an agreement -- let me ask you -- rephrase the
14 question. Did you have an agreement prior to confirmation plan
15 with Stephen Gray or his attorney that all taxes would be paid?

16 A. I believe that the objection to the plan was based on
17 employment taxes, a proof of claim for which had been filed by
18 the Internal Revenue Service, that's -- that's what I believed,
19 by my going back to the docket. I have no recollection of the
20 case from 1997, but that would be my recollection. I had no --
21 I had no other agreement with respect to taxes outside of
22 whatever would have been on a proof of claim filed by the
23 Internal Revenue Service.

24 The record that I went back to look at reflects that
25 there was an amount of approximately \$18,000 on a proof of

1 claim filed by the Internal Revenue Service. It was not clear
2 to me, so I filed an objection to the confirmation. It was not
3 clear that that amount was going to be paid through the plan.

4 It was made clear to me at the confirmation hearing
5 or perhaps right before the confirmation hearing that that
6 amount would be paid probably before the Court. I withdrew the
7 -- the objection, my objection, in front of the Court because
8 my sole objection to the plan was with respect to that proof of
9 claim that I had to make sure would be filed.

10 Q. But you were a witness on confirmation plan, you did
11 see the arguments in front of you regarding the assets would be
12 sold in December 31st, and there would be basically a profit on
13 who's the legitimate owner and that -- you were a witness to
14 that. You were there.

15 A. I don't recall any testimony with respect to payment
16 of other taxes.

17 Q. Did you acknowledge at the confirmation plan that
18 Stephen Gray was appointed the owner to achieve tax credit,
19 twelve million dollars?

20 A. The only thing, and this is, only because I went back
21 and wro -- and read the docket, is that the docket reflects
22 that in court I withdrew my objection to the confirmation of
23 the case. I wouldn't have made statements with respect to the
24 payment of other taxes that were not reflected on a proof of
25 claim. I do not remember the rest of the testimony from that

1 confirmation hearing.

2 Q. In Judge Kenner's order, she doesn't refer to payroll
3 taxes, she refers all taxes would be satisfied at the -- at the
4 distribution of the sale, so that means employees' taxes,
5 profit from the sale, whatever, you have a agreement with
6 Stephen Gray that Mourad is no longer involved. He is
7 appointed the owner, that Stephen Gray is responsible for *all*
8 taxes. It's irrelevant, whether it is employee taxes, or
9 profit (unclear)

10 THE COURT: Are you asking a question, Mr. Mourad?

11 MR. MOURAD: I'm sorry.

12 THE COURT: You're going back to arguing and
13 testifying again.

14 MR. MOURAD: You're right, I'm sorry, I have that --

15 THE COURT: Your testimony is that you don't recall
16 discussion -- you were interested in other taxes, you're
17 worried about a very specific proof of claim, and you were
18 satisfied that was going to get taken care of?

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: Okay.

21 MR. MOURAD: Then I'll ask one more question.

22 **BY MR. MOURAD:**

23 Q. Not one witnessed at the confirmation plan -- did you
24 have an obligation to say, "I'm going to object to outcome of
25 the sale because our tax is not protected and that Stephen Gray

1 the owner"?

2 A. No, the objection that I would have filed would have
3 been with respect to the proof of claim that we filed. It
4 would have been with respect to the pre-petition taxes,
5 whatever they might have been, for V&M. When it was made clear
6 that that amount would be paid, it was upon that basis that I
7 would have withdrawn the objection, and I'm saying -- I'm
8 saying this based upon my review of the docket. I had no side
9 agreements with respect to other taxes, I couldn't have had. I
10 wouldn't have known what the taxes were at that time.

11 Q. Did you -- Did you acknowledge Stephen Gray at that
12 day he's the owner?

13 A. I would have recognized him in his capacity as
14 Chapter 11 Trustee on that day. I -- I made no statement to
15 the Court, at least I have no recollection of making a
16 statement to the Court, I wouldn't have made a statement like
17 that to the Court.

18 Q. Did you hear Judge Kenner saying, "I appoint him the
19 owner."

20 A. I don't recall.

21 Q. Were you involved in the tax credit application
22 anyways?

23 A. No.

24 Q. Have you seen any of the tax documentation?

25 A. No.

1 MR. MOURAD: No further questions, Your Honor.

2 MR. MOORE: Your Honor, I have no questions.

3 THE COURT: All right. Is there any reason why we
4 have to keep this witness here or --

5 MR. MOURAD: No, she's --

6 THE COURT: All right. Thank you very much for
7 your --

8 THE WITNESS: Thank you.

9 THE COURT: -- participation. You may be excused.

10 THE WITNESS: Thank you.

11 THE COURT: Thank you. All right. You have two
12 other witnesses, a Mr. Cohen. There are two Mr. Cohens on your
13 list. Which Mr. Cohen is this?

14 MR. MOURAD: Beacon Management, Your Honor.

15 THE COURT: Okay.

16 MR. MOURAD: Howard Cohen.

17 THE COURT: You want to -- it's up to you, whether
18 you want to call Mr. Gray or Mr. Cohen. Can we dispose of -- I
19 don't mean dispose of them in the pejorative sense. Can we
20 deal with Mr. Cohen fairly -- fairly expeditiously?

21 MR. MOURAD: Yes. I think that's --

22 THE COURT: All right. Let's -- Let's take Mr.
23 Cohen next, if that's okay with you.

24 MR. MOURAD: Thank you.

25 THE COURT: Is that all right with you? Mr. Harold

1 is it?

2 MR. MOURAD: Howard.

3 MR. COHEN: Howard Cohen.

4 THE COURT: Howard.

5 **HOWARD COHEN, PLAINTIFF'S WITNESS, DULY SWORN**

6 THE COURT: Go ahead, Mr. Mourad.

7 **DIRECT EXAMINATION**

8 **BY MR. MOURAD:**

9 Q. Mr. Cohen, state your name?

10 A. Howard Cohen C-O-H-E-N.

11 Q. And your position?

12 A. I'm president of Beacon Residential Properties.

13 Q. And your partnership -- are you -- could you describe
14 your partnership with Beacon Residential Property? Do you have
15 a corporation?

16 A. Beacon Residential Properties is a limited
17 partnership.

18 Q. And you are the limited partner, person?

19 A. That has a corporation as a general partner and then
20 a series of people as limited partners, and I am one of the
21 limited partners.

22 Q. Could you disclose the name of the general partners?

23 A. The name of the general partners is Beacon
24 Residential Properties, Corp.

25 Q. The name of the principals, or stockholders?

1 A. Are Myself and Edwin Sidman (phonetic).

2 Q. Who else?

3 A. I think those are the only two.

4 Q. Is this presently the only two?

5 A. Correct.

6 Q. When you filed your application, there was only --

7 THE COURT: Application -- whoa -- whoa -- whoa.

8 Complete sentences, please. What application?

9 MR. MOURAD: I --

10 THE COURT: There's no foundation for any
11 application right now, so let's try to be clear. You
12 understand this. I -- And I understand you've lived with this
13 for many, many years. I've never heard this testimony before,
14 so --

15 MR. MOURAD: You're right.

16 THE COURT: -- let's try to skip those shortcuts --

17 MR. MOURAD: I'm -- walking --

18 THE COURT: -- that leaves me sort of wondering what
19 you're talking about.

20 MR. MOURAD: You're guiding me through it, Your
21 Honor, I'm going through --

22 THE COURT: Okay.

23 MR. MOURAD: I'm following.

24 BY MR. MOURAD:

25 Q. Did you join the partnership with the Trustee,

1 Stephen Gray?

2 A. No.

3 Q. When you filed an application -- did you file an
4 application for tax credits?

5 A. Applications for tax credits were filed for the
6 rehabilitation of the apartments.

7 Q. Who filed applications?

8 A. I don't have the memory of that and I didn't review
9 those records.

10 Q. How did you qualify for the tax credit?

11 A. I didn't review those records, it was not part of
12 what you asked me to review for coming in. I presume, you
13 know, I'm the president of the company, we have a staff, I
14 mean, lawyers -- and applications were put together and the
15 credits were awarded back in 1997 and -- and we did the
16 rehabilitation in 1998.

17 Q. But that is -- the tax credit they were awarded to
18 Stephen Gray as the first application?

19 A. I don't really have any memory of -- technically the
20 steps that went on.

21 Q. Okay.

22 MR. MOURAD: I need your help, Your Honor. Should I
23 present the exhibits regarding testimony. I have --

24 THE COURT: Show him what you want him to answer --

25 MR. MOURAD: Thank you.

1 THE COURT: -- questions about and if he can
2 identify them --

3 MR. MOURAD: I appreciate that, Your Honor.

4 THE COURT: -- then we'll go from there.

5 MR. MOURAD: Let me look at the witness list. Very
6 good. (Pause) Mr. Moore -- I have one-stop application, Your
7 Honor, I can't seem to find it here.

8 MS. LUEFT: It's right here.

9 MR. MOURAD: Do you have one?

10 MS. LUEFT: Oh, it's there.

11 MR. MOURAD: It was, but I'm just going quick.

12 THE COURT: What number -- don't -- take your time.
13 What number exhibit is it in your exhibit book? (Pause) All
14 right, I'm going to take a five minute recess, it's a little
15 warm in here, while Mr. Mourad tries to find what he's looking
16 for.

17 MR. MOURAD: Thank you, Your Honor.

18 THE COURT: We'll come back in five minutes.

19 [Off the record at Tape #2, Index #930. 11:39 a.m.]

20 * * * * *

21 [On the record at Tape #2, Index 931. 11:46 a.m.]

22 THE COURT: All right. Let the record show we're
23 going back on the record after a ten-minute recess to give Mr.
24 Mourad an opportunity to get his exhibits in order. Are we
25 ready to proceed, Mr. Mourad?

1 MR. MOURAD: Yes, Your Honor.

2 THE COURT: All right, let's go.

3 MR. MOURAD: I would like to show this exhibit --
4 make it Exhibit 20, Your Honor, for --

5 THE COURT: Well, whoa, whoa, whoa, whoa. It's not
6 in your book?

7 MR. MOURAD: I couldn't find it, but I found a
8 document. Could I --

9 THE COURT: Well, as I understand Judge Kenner's
10 pre-trial order, if it wasn't -- exhibit wasn't presented as
11 part of the book, it's not admissible. Now show it to Mr.
12 Moore, and perhaps he won't object and we can move along. Show
13 it to Mr. Moore.

14 MR. MOURAD: Mr. Moore.

15 (Pause)

16 MR. MOORE: Your Honor, the only issue I have with
17 it is, I know it's leading into a subject matter that I think
18 is beyond the scope of -- of what we're hearing today, but if
19 you want to give him the opportunity to try to connect it,
20 that's fine.

21 THE COURT: Fine, all right, then show it to the
22 witness. Well, let's mark it first for identification, because
23 -- I -- I only have 18 exhibits in the book.

24 MR. MOURAD: Exhibit 19.

25 THE COURT: Exhibit 19. All right.

1 **WHEREUPON EXHIBIT 19 WAS MARKED FOR IDENTIFICATION**

2 MR. MOURAD: We'd like to have this introduced, Mr.
3 Cohen. ??

4 THE COURT: Well, let's see whether he can identify
5 it for starters.

6 MR. MOURAD: This is the letter of August --

7 THE COURT: Well, wait -- wait, let -- let him look
8 -- let him look at it.

9 THE WITNESS: I've -- I've read it, Your Honor.

10 **BY MR. MOURAD:**

11 Q. You remember?

12 A. Yes.

13 THE COURT: All right. Go ahead, Mr. Mourad.

14 **BY MR. MOURAD:**

15 Q. So Stephen Gray -- Did Stephen Gray file the first
16 application for a tax credit?

17 A. I don't know about first or second. There's an
18 application that MRCA, man -- the Mandela Residents'
19 Cooperative, and BRP, Beacon Residential Properties, submitted
20 for tax credits.

21 Q. Did you form a shell corporation joint partnership
22 with Stephen Gray and the Mandela Residents and Beacon
23 Properties?

24 A. No.

25 Q. You never formed a partnership?

1 A. Not with those parties.

2 Q. Not with those parties. Did you form a partnership
3 with Stephan Gray?

4 A. No.

5 Q. Then how was the tax credit transferred to you?

6 A. It wasn't transferred to us.

7 Q. Then you applied for the tax credit.

8 A. Correct.

9 Q. And Stephen Gray was not a joint partner.

10 A. Correct.

11 Q. What year did you apply?

12 A. 1997.

13 Q. Presently, who owns the Mandela developments?

14 A. It's a partnership and the name of the partnership,
15 so I can get it exactly right, is Mandela Homes Limited
16 Partnership, and discussing general partners and some limited
17 partners, AND I'll go through it with you, if you like.

18 Q. Who is Mandela Homes -- yes, could you go through it,
19 please?

20 A. The general partners of Mandela Homes Limited
21 Partnership are a company called BRP, Inc., which is our
22 company, Beacon Residential Properties, Inc., and then another
23 company called Mandela New Life Redevelopment Corporation; and
24 then the limited partners are the Massachusetts Housing Equity
25 Fund 1997 Limited Partnership, and the Massachusetts Housing

1 Equity Fund 1998 Limited Partnership.

2 Q. What is that Mandela New Life?

3 A. I'm not sure I understand the question.

4 Q. The principal of the Mandela New Life?

5 A. I'm not positive, I believe the Mandela New Life

6 Redevelopment Corporation is owned by Mandela Residents'

7 Cooperative Association.

8 Q. Does that exist today?

9 A. As far as I know it does.

10 Q. So there is a partnership between Beacon and Mandela
11 Residents Corporation?

12 A. Yes, yes.

13 Q. Today it exists.

14 A. Yes.

15 Q. You mentioned before only ha -- Beacon Management
16 applied for the tax credit.

17 A. No, I said Beacon and Mandela Residents' Cooperative
18 Association applied for the tax cuts.

19 Q. All right. Could you describe the partnership?

20 A. Yes, I can.

21 Q. I'd appreciate it.

22 A. My company entered into a partnership with Mandela
23 Residents' Cooperative Association in which we agreed to submit
24 an application to the Bankruptcy Court, hoping to get a -- our
25 plan approved for the acquisition and re-development of Mandela

1 Homes. We had a statement of partnership principals that we
2 entered into in early in 1997, and -- that subsequently
3 participated in the bankruptcy proceeding. I don't know the
4 technical terms, but ultimately we were designated as the party
5 to, you know, buy the property and redevelop it, and we did
6 that.

7 Q. And was the intention of Beacon Management in a
8 period of five years or so to turn the property over for one
9 dollar to Mandela Residents, that was part of their partnership
10 with a tax credit?

11 A. Part of our agreement is that there is two general
12 partners, as I said before, and part of our agreement is that,
13 subject to the approval of our equity investor and our lim --
14 and our bank, we would withdraw as general partner and the
15 residents' organization would be the sole general partner,
16 that's correct.

17 Q. So today if the residents organized together and they
18 get an attorney, and they came back to you with a proposal, do
19 you withdraw and they would become the owners?

20 A. We actually have no say in the decision-making at
21 all. It's entirely up to the financing authority which are --
22 well, one of them is a public agency, and another one is a --
23 sort of a civic venture, and they make that decision about
24 whether the residents' corporation would become the sole
25 general partner.

1 Q. If you have to follow procedure and then the tax
2 credit to sign an extension of the Section 8 HUD contract for
3 the duration of the tax credit?

4 A. I'm not sure I understand the question.

5 Q. Part of the tax credit, did you file an extension
6 Section 8 with HUD.

7 A. We -- We have continued --

8 Q. To satisfy the tax credit application?

9 A. It's not to satisfy the tax credit application; it's
10 part of our partnership and we've continued to take Section 8
11 payments for all the units.

12 Q. Do you have a new contract with HUD since the tax cut
13 was established?

14 A. Can't tell what's a new contract or just an extension
15 of the old contract, but we have a contract.

16 Q. Is that a requirement as a tax credit for affordable
17 housing, you have to have fifteen years Section 8 housing
18 guarantee?

19 A. Not Section 8, but we've agreed that it will be
20 affordable housing forever.

21 Q. But now a renewal Section 8?

22 A. I don't remember whether that's a specific condition,
23 but we did agree that it would be affordable housing forever.

24 Q. Were you approved by the Boston Redevelopment
25 Authority --

1 A. Yes.

2 Q. -- on the application tax credit?

3 A. The Boston Redevelopment Authority had to approve
4 other parts of the application, and they did so.

5 Q. Did you have a 6A agreement?

6 A. You're talking about 121A6A agreement?

7 Q. Correct.

8 A. There was one and it's continued.

9 Q. Was that agreement filed with a deed?

10 A. I don't know technically how that happens.

11 Q. It's a requirement. If that's the only protection --

12 THE COURT: He answered the question, move on.

13 MR. MOURAD: Okay.

14 MR. MOORE: Your Honor, again, as I suggested,
15 relevance. We seem to be going far afield here.

16 THE COURT: Yeah. Thank you, Mr. Moore. Why is
17 this relevant to the two limited issues that we're talking
18 about? What he's done since he bought it, he and his business
19 ventures, why is that at all relevant to the causes that we're
20 trying today?

21 MR. MOURAD: Okay, Your Honor, maybe that's relevant
22 -- I -- I'll tell you how I feel in two seconds. The way I see
23 a one-stop application from a tax attorney from (unclear) , the
24 way he explained it to me, what happened here, there was a
25 shell corporation created. Stephen Gray, because he became the

1 owner, he -- he made the first application to establish a tax
2 credit on his name, and he stepped in my shoes, and then he
3 transferred it to a shell corporation of Beacon Management.

4 THE COURT: I -- I don't have a problem with you
5 examining on -- on that.

6 MR. MOURAD: Understand? Okay.

7 THE COURT: But you're -- you're beyond that now
8 into other --

9 MR. MOURAD: Okay, that's what I'm trying to
10 accomplish.

11 THE COURT: -- into -- beyond the sale transaction
12 and the tax credits into their ownership and operation, which I
13 don't think is any of our business and -- nor is it relevant to
14 -- to the case I'm trying. So move on. Thank you, Mr. Moore.

15 MR. MOURAD: Okay.

16 THE COURT: Take a second and get your train of
17 thought back and let's go.

18 MR. MOURAD: I have no further questions.

19 THE COURT: Don't go away, sir, Mr. Moore may have
20 questions for you.

21 **CROSS EXAMINATION**

22 **BY MR. MOORE:**

23 Q. Mr. Cohen, if you could, prior to this project, did
24 you have any experience with tax credits?

25 A. Yes.

1 Q. Okay. And could you explain -- could you briefly
2 describe what that experience is?

3 A. Part of what our company does is use tax credits to
4 develop low-market housing, we're extensive participants in the
5 program here and in other states.

6 Q. Could you briefly just explain how a tax credit
7 program works for the Court and --

8 A. In brief, Congress has authorized tax credits that
9 can be used, sold to investors to generate income for
10 redeveloping low to ma -- low-market income housing. The
11 proponent of a development actually applies to the state and
12 there's a certain amount of credits that are allocated to the
13 estate. It's an extensive competitive process you go through
14 where you submit your redevelopment plans, and your track
15 record, and all the appropriate approvals that you need.

16 You apply for those and they are awarded to a --
17 usually a partnership or a limited liability company, and the
18 -- most of those companies bring in investors who could utilize
19 the credits, often corporations, and the credits are, quote,
20 "syndicated," and that money that comes in is then used with
21 other sources of funds to develop affordable housing.

22 Q. And do you know on what basis tax credits are -- tax
23 credits are awarded?

24 A. Every state has what's called a qualified allocation
25 plan, and it sets forth preferences and priorities, and I --

1 it's a competitive process, and you have to, you know,
2 neighborhoods, and quality of the work, and importance to the
3 municipality.

4 I'm in the process of running competitive rounds in
5 Massachusetts, there's two each year.

6 Q. And you mentioned in an earlier answer the taking
7 into account the development plan and the track record?

8 A. Correct.

9 Q. In your experience, had Mr. Gray during the Chapter
10 11 case, applied for tax credits for, say, a stand-alone
11 bankruptcy reorganization, do you think Mr. Gray would have
12 been likely to received any tax credits?

13 A. It would have been very unusual.

14 Q. And why is that?

15 A. Because the state evaluates the credits. These are
16 very scarce resources, they're very valuable, and the state
17 evaluates the credit based on the track record of the team and
18 their ability to op -- you know, to develop these projects on a
19 timely basis and then own them for the foreseeable future.

20 So, you know, again, you're evaluated about your
21 experience in being able to develop these developments.

22 MR. MOORE: I think that's all I have, Your Honor.

23 THE COURT: Thank you. Anything further Mr. Mourad?

24 MR. MOURAD: Yes, two questions.

25 **REDIRECT EXAMINATION**

1 BY MR. MOURAD:

2 Q. Have you done previous tax credits, Mr. Cohen, in
3 other developments?

4 A. Yes.

5 Q. And is there a requirement, the owner who owns the
6 land and the building for ten years' duration would qualify for
7 tax credit, do you recall that?

8 A. No.

9 Q. And so to you it's not a requirement, Section 42 of
10 the IRS, that you have to have ten years of ownership to
11 qualify for tax credits?

12 A. It is -- It is not a requirement.

13 Q. Pardon?

14 A. It is not a requirement.

15 Q. It's not a requirement.

16 A. It is not a requirement.

17 Q. And when you purchased the Mandela Apartments, was it
18 purchased out of tax credit money?

19 A. One of the sources of funds was the money we were
20 able to raise through the tax credits, as well as bank
21 financing.

22 Q. So there was no out-of-pocket money from anybody,
23 except the tax credits?

24 A. Now, there wasn't --

25 Q. In order to purchase.

1 A. No, there was other money.

2 Q. Did -- Did you disclose that?

3 A. I don't -- again, I didn't review the documentation
4 before I came here, but there was a first mortgage loan from
5 the Massachusetts Housing Partnership; there was a second
6 mortgage loan from Fleet Bank and the MPNC Bank; there were
7 loans from the Department of Housing Community Development and
8 the City of Boston; there was an equity investment from the
9 Massachusetts Housing Investment Corporation as our limited
10 partner. There may have been other sources.

11 Q. Were those to be paid from the tax credit allocation
12 to a bid of three years, or they were just separate loans, not
13 relevant to a tax credit?

14 A. Separate loans.

15 Q. So you still owe on those loans?

16 A. Correct.

17 MR. MOURAD: No further questions.

18 **COURT EXAMINATION**

19 **BY THE COURT:**

20 Q. Let me just understand one thing, Mr. Cohen.

21 A. Sure.

22 Q. Mr. Mourad asked you several questions with respect
23 to Mr. Gray's relationship to your enterprise, which was the
24 buyer, and I think your answer was there was no such
25 relationship other than he was the seller and you were the

1 buyer.

2 A. Yes, and let me clarify it because that's this
3 exhibit.

4 THE COURT: Excuse me. If you have to have a
5 conference, go outside in the hall.

6 UNIDENTIFIED FEMALE: Sorry.

7 **BY THE COURT:**

8 Q. Go ahead, Mr. Cohen.

9 A. When you apply for tax credits, you need to show to
10 the agency you're applying for that you have site control; that
11 is, that if they award you the credits, you'll be able to buy
12 the building, and so in a typical transaction, the owner, you
13 have a purchase and sale agreement with the owner, and you
14 submit that as part of your evidence that you have site
15 control. So Mr. Gray, as the Trustee bankruptcy, gave us the
16 appropriate letters showing that we would have site control in
17 order to be able to apply for the credits.

18 Q. So you had authorization, meaning by way of him by
19 way of letter or purchases of sale, perhaps both --

20 A. Exactly.

21 Q. -- but other than that, he was the seller in your
22 entity, your enterprise was the buyer, is that --

23 A. Correct.

24 Q. That was the only relationship.

25 A. Only relationship.

1 Q. Okay, he had no financial interest --

2 A. No.

3 Q. -- in your enterprise before, during, or after this
4 transaction, is that correct?

5 A. Correct.

6 THE COURT: Thank you.

7 MR. MOORE: Your Honor, I just had one further
8 question, if I could.

9 THE COURT: Go ahead.

10 **RECROSS EXAMINATION**

11 **BY MR. MOORE:**

12 Q. Mr. Howard -- Mr. Cohen, with respect to tax credits,
13 do you know whether they can be utilized retroactively as
14 opposed to prospectively?

15 A. No, they're awarded prospectively.

16 Q. And so tax credits can't be used to offset income
17 prior to the order of the tax credits, correct?

18 A. I don't know the tax rules about whether some -- I
19 don't know those rules.

20 Q. Okay. That's fine, thank you.

21 THE COURT: Are you -- Is there any reason why we
22 can't excuse Mr. Cohen?

23 MR. MOORE: No, Your Honor.

24 THE COURT: Any reason to keep Mr. Cohen here?
25 Thank you, Mr. Cohen.

1 THE WITNESS: Thank you.

2 THE COURT: You're excused. All right. As I
3 understand it, Mr. Mourad, you have one more witness and that
4 will be Mr. Gray.

5 MR. MOURAD: That's correct.

6 THE COURT: How long do you think your examination
7 of Mr. Gray will take?

8 MR. MOURAD: Probably about an hour and a half.
9 He's the main witness, Your Honor.

10 THE COURT: All right.

11 MR. MOURAD: Could be an hour. I'll go through it
12 quick.

13 THE COURT: Well, I'm not -- I don't want to rush
14 you, I'm just trying to gauge because we've got some people
15 that are probably hungry here, and I want to finish this
16 afternoon if we can. If we break now and come back at one
17 o'clock, does that give everybody a chance to grab a bite? All
18 right, fine. Why don't we recess now. Can we -- leave the
19 materials there. Pierre, can we lock the courtroom?

20 CLERK: Yes.

21 THE COURT: All right. We'll lock the courtroom so
22 you can leave your stuff right there, and be back ready to go
23 at one o'clock.

24 [Off the record at Tape #2, Index 2101, 12:04 p.m.]

25 * * * * *

1 [On the record at Tape #2, Index #2101, 1:00 p.m.]

2 THE COURT: Mr. Mourad?

3 MR. MOURAD: Yes, Your Honor.

4 THE COURT: Did you want to ask for permission to
5 have somebody else to sit at counsel table with you?

6 MR. MOURAD: Just assist me with the records.

7 THE COURT: And who is this person?

8 MR. MOURAD: Lorraine.

9 MS. LUEFT: Lorraine Lueft L-U-E-F-T. I'm not a
10 paralegal or anything, I'm just an administrative assistant.

11 THE COURT: Do you have any objection, Mr. Moore?

12 MR. MOORE: No objection, Your Honor.

13 THE COURT: Very well, fine.

14 MS. LUEFT: Thank you very much.

15 THE COURT: Are we ready to proceed?

16 MR. MOURAD: Yes, Your Honor.

17 THE COURT: All right, call your next witness.

18 (Pause) All right, call your next witness, Mr. Mourad.

19 MR. MOURAD: Mr. Stephen Gray.

20 THE COURT: Mr. Gray?

21 **STEPHEN GRAY, DEBTOR'S WITNESS, DULY SWORN**

22 MR. MOURAD: First, Your Honor, may I admit all the
23 exhibits for evidence to this court?

24 THE COURT: Well, when you say, "all the ev --
25 exhibits" --

1 MR. MOURAD: The pre-trial statements, that's what I
2 mean.

3 THE COURT: Well, you're offering them all?

4 MR. MOURAD: Yes.

5 THE COURT: All right. Are there any objections,
6 Mr. --

7 MR. MOORE: Your Honor, I have no objection to those
8 he referred to, but I -- I -- I've not gone through the entire
9 list.

10 THE COURT: All right. So let's -- let's start with
11 those. Let's -- Let's -- Let's go back through, according to
12 my notes -- and you keep track, Mr. Mourad, these are your
13 exhibits -- according to my notes, Mourad's on plaintiff's
14 Exhibit #1, was discussed, that was the '95 tax return. Mr.
15 Moore has indicated that he has no objection to that.

16 **WHEREUPON PLAINTIFF'S EXHIBIT #1 WAS ADMITTED INTO EVIDENCE**

17 THE COURT: The Trustee's exhibits, which were 15,
18 19, and 21, there were no objections, and they are admitted.

19 **WHEREUPON TRUSTEE'S EXHIBITS #15, #19, #21, WERE ADMITTED**
20 **INTO EVIDENCE**

21 THE COURT: The plaintiff's, Mourad's Exhibit #19, I
22 haven't seen it, I don't know where it is. It was the --

23 MS. LUEFT: Oh, yes, the certificate?

24 THE COURT: Let me see it.

25 MR. MOURAD: Yes, it's actually all we made in 19 --

1 THE COURT: Okay. You have no objection to that
2 either, is that correct, Mr. Moore?

3 MR. MOORE: Correct, Your Honor.

4 THE COURT: All right. So that is admitted.

5 **WHEREUPON PLAINTIFF'S EXHIBIT #19 WAS ADMITTED INTO EVIDENCE**

6 THE COURT: Those are the only exhibits at the
7 moment that are being admitted. Now you want -- you want to
8 move admission of others?

9 MR. MOURAD: Yes, Your Honor.

10 THE COURT: All right. Let's -- Let's deal with
11 those right now. Let's start from the beginning. Exhibit #1
12 is admitted already. Exhibit #2 is a letter with, I guess,
13 your tax assessment. Is there an objection to that, Mr. Moore.

14 MR. MOORE: No, Your Honor, that's fine.

15 THE COURT: All right. So Exhibit 2 is admitted.

16 **WHEREUPON PLAINTIFF'S EXHIBIT #2 WAS ADMITTED INTO EVIDENCE**

17 THE COURT: Exhibit 3, financial statements prepared
18 by -- a draft financial statement of two pages by Mr. Slavin.
19 Any objection to that? I'm going by what I was given, two
20 pages.

21 MR. MOORE: I do object to that, Your Honor, it
22 hasn't been authenticated by anyone, I don't know what it's
23 relevant to, and I don't want to clog the record in the event
24 that appeal was --

25 THE COURT: All right. I'm going to make a list of

1 not admitted and then we'll go back and deal with them. Not
2 admitted is #3. #4 is a three-month budget, I don't know what
3 it is. Objection or no objection?

4 MR. MOORE: Objection, Your Honor, same basis.

5 THE COURT: All right, 4 is -- is not admitted at
6 the moment. #5 is an appraisal. Objection or no objection?

7 MR. MOORE: Objection, Your Honor.

8 THE COURT: Okay. Not admitted. #6?

9 MR. MOORE: We object for the same reason, Your
10 Honor. I don't think it's relevant.

11 THE COURT: Well, I'm -- I'm not asking for reasons
12 right now.

13 MR. MOORE: Thank you, Your Honor.

14 THE COURT: #7?

15 MR. MOORE: Object.

16 THE COURT: 7 is an objection. #8?

17 MR. MOORE: Objection.

18 THE COURT: 8 is an objection. 9?

19 MR. MOORE: Objection.

20 THE COURT: 10?

21 MR. MOORE: Objection.

22 THE COURT: 11?

23 MR. MOORE: Objection.

24 THE COURT: 12?

25 MR. MOORE: No objection, Your Honor.

1 THE COURT: 12 is in.

2 WHEREUPON PLAINTIFF'S EXHIBIT #12 WAS ADMITTED INTO EVIDENCE

3 THE COURT: 13?

4 MR. MOORE: If I might just have a moment, Your
5 Honor, please?

6 (Pause)

7 THE COURT: It's not complete.

8 MS. LUEFT: That's -- yeah.

9 MR. MOURAD: Yes, Your Honor, I just saw -- I have
10 the completion here. Could I submit a couple of pages from the
11 same exhibit?

12 THE COURT: It's more than a couple of pages.

13 MR. MOURAD: That's all I need, three pages.

14 THE COURT: Well, which three pages are you
15 proposing?

16 MR. MOURAD: 77, 76, and 75, and 74, that will do
17 it.

18 THE COURT: You're proposing that Exhibit 13, only
19 pages 74 through 77, which are not part of the book, your pre-
20 trial statement should be admitted. Objection or no objection?

21 MR. MOORE: Objection.

22 THE COURT: Okay. 13 there's an objection. 14?

23 MR. MOORE: Objection.

24 THE COURT: 15?

25 MR. MOORE: Objection.

1 THE COURT: 16?

2 MR. MOORE: Objection.

3 THE COURT: 17?

4 MR. MOORE: Objection.

5 THE COURT: 18?

6 MR. MOORE: Objection.

7 THE COURT: All right. So the only additional
8 exhibits that I'm admitted are Exhibits 2 and 12 of Mr. Mourad.
9 The rest, Mr. Mourad, you'll have to put in in the usual
10 fashion. You'll have to authenticate them and offer them in
11 the usual way through a witness, unless they are public
12 records, duly certified.

13 Proceed with your case, please.

14 MR. MOURAD: Thank you, Your Honor.

15 **DIRECT EXAMINATION**

16 **BY MR. MOURAD:**

17 Q. Please state your name?

18 A. Stephen S. Gray G-R-A-Y.

19 Q. Your occupation?

20 A. I am the president of a firm called The Recovery
21 Group, Inc., here in Boston.

22 Q. And your position to V&M Management?

23 A. I have no position at -- in V&M Management at this
24 point in time. I served previously as Chapter 11 Trustee for
25 V&M Management during its bankruptcy proceedings.

1 Q. Do you recall what year?

2 A. Yes, '96, '97, and into '98, I believe.

3 Q. Okay. As the U.S. Trustee, what was your -- do you
4 have certain application you have to file to the U.S.
5 Bankruptcy Trustee?

6 A. I'm sorry, I --

7 Q. Do you have any forms you have to submit, bond,
8 insurance, et ceteras, as a Trustee from day one you're
9 appointed?

10 A. Yeah, we -- as Trustee I have lots of obligations,
11 including --

12 Q. Could you -- could you name them?

13 A. -- including submission of various reports and forms
14 and bonds, yes.

15 Q. Could you name the application, you have to file the
16 day you were appointed to the U.S. Trustee?

17 A. The application. There is a -- There's an
18 application for employment, an affidavit that is attendant to
19 that, and usually a bond requirement, depending on the case.

20 Q. Do you recall filing two statements, verified
21 statement and amended statements of disclosure to the U.S.
22 Bankruptcy Trustee, that if you had any conflict of interest
23 with the creditors or any other persons?

24 A. I do.

25 Q. Do you recall in your first statement that your

1 disclosure, that you have no conflict of interest with an
2 attorney, Harold Murphy, who represents Hanify & King?

3 MR. MOORE: Your Honor, if I may object. It seems
4 we're rehashing an issue that -- that's been hashed before and
5 it's totally irrelevant to today's purposes.

6 THE COURT: What's the relevancy of this --
7 remember, we're dealing with two issues today, Mr. Mourad: the
8 appropriateness and the cause for your filing a late claim, and
9 the alleged negligence of Mr. Gray and administration of the
10 estate.

11 What does the -- your questions and this line of
12 inquiry have to do with each or any of those issues?

13 MR. MOURAD: Fine. Your Honor, from a business
14 point of view, the relationship between Stephen Gray, the
15 Trustee, and my attorney for prior cases he was represented,
16 none of them disclosed to me, and because of that, Attorney
17 Howard Murphy did not object on the day of the Trustee, he
18 allowed the BRA attorney to leading to cross -- to -- to cross-
19 exam all the witnesses and he was also on the stand, and he did
20 not file an appeal because Judge Kenner clearly in her finding,
21 she was wrong on both counts. She said in 1984 that I have
22 taken four -- six million dollars out of the property and
23 mismanaged it.

24 THE COURT: All right. But let me -- let me -- I --
25 I understand that and you're not happy with that, but I'm not

1 dealing with every possible issue within this bankruptcy. I'm
2 dealing with, since I don't think this inquiry could have any
3 possible relationship to the appropriateness of your late
4 claim, tell me why it has anything to do with Mr. -- the
5 negligence in the administration of the estate that you suggest
6 to me, Mr. Gray, or you allege Mr. Gray --

7 MR. MOURAD: Fine.

8 THE COURT: -- committed.

9 MR. MOURAD: Attorney Howard Murphy was already
10 appointed by the Court as counsel for the debtor. My question
11 is, why does he need two counsels which Howard Murphy did file
12 no motions from the date of Trustee to October 10, when he
13 withdraw, and he was paid in excess of \$100,000. I have a
14 problem with that, because that money belonged to our
15 creditors. He --

16 THE COURT: Did -- did -- Are you saying that Mr.
17 Murphy, having apparently, at least as you see it, an alleged
18 conflict, was something that Mr. Gray was responsible for?

19 MR. MOURAD: Yes, because I feel there was a --
20 indirectly a partnership of Mr. Murphy could want to appeal, he
21 could basically fought for V&M Management and the creditors,
22 and he took a back seat for eight months and he was compensated
23 for excess of \$100,000 to the benefit of the Trustee. He did
24 not benefit --

25 THE COURT: So you think the Trustee was negligent

1 by not -- by paying Mr. --

2 MR. MOURAD: No -- yeah, he --

3 THE COURT: -- Mr. Murphy?

4 MR. MOURAD: He didn't need two counsel, Your Honor.

5 He already has Paul Moore as his -- as a counsel for the

6 debtor.

7 THE COURT: So you're alleging that Mr. Moore was --

8 Mr. Murphy was acting on behalf of the Trustee and not on

9 behalf of --

10 MR. MOURAD: That's correct.

11 THE COURT: -- V&M Management?

12 MR. MOURAD: Thank you, Your Honor. You clarified

13 it, yes.

14 THE COURT: Okay. And what does that have to do

15 with the allegations of alleged negligence?

16 MR. MOURAD: There was excessive fee that it does

17 not benefit the estate or the creditors or the owner.

18 THE COURT: All right, but -- but that -- those fees

19 were heard and allowed, I was going to say months ago, but I

20 suspect it was years ago, is that correct? Final orders were

21 entered on those.

22 MR. MOURAD: Right.

23 THE COURT: Okay. What's the basis of me now -- you

24 -- permitting you to reopen that issue? That's a final --

25 Those are final orders of the Court. They were not appealed

1 apparently, or if they were, the appeals were unsuccessful, and
2 that's not before me now, so I -- I -- you're not saying Mr.
3 Gray paid them without court authorization.

4 MR. MOURAD: No, obviously, Judge Kenner did
5 authorize it.

6 THE COURT: And -- And --

7 MR. MOURAD: All right. I'll rephrase that.

8 BY MR. MOURAD:

9 Q. Did Mr. Murphy send invoices for his hourly rate what
10 he has filed for motions and be able to justify the excess of
11 \$100,000 that you paid him?

12 A. Mr. Murphy never sent me any invoices.

13 Q. Then why was he paid \$125,000 legal fee?

14 A. I don't know what Mr. Murphy was -- was paid
15 specifically. If he was -- I do recall he was -- he filed a --
16 an application for compensation in the bankruptcy, that
17 application was allowed by the Court, and I was ordered by the
18 Court to pay Mr. Murphy, along with other professionals in the
19 case.

20 Q. I see. So he did not benefit any -- the creditors or
21 the sole owner, he just filed one application to the Judge and
22 said, "I need \$125,000," and the Judge says, "Okay, you got
23 it." No justification at all, that's what he said.

24 A. I'm not sure what your question is.

25 Q. The question is, there's no justification for his

1 fee, in excess of \$125,000. Where's the benefit? The
2 creditors --

3 THE COURT: I think he answered -- I think he
4 answered the question by saying it was not for him to decide,
5 Judge Kenner decided it, and he implemented the Court's order,
6 as he was responsible to do as Chapter 11 Trustee. Is that a
7 fair summary of what you were trying to say, Mr. Gray?

8 THE WITNESS: Yes, Your Honor.

9 MR. MOURAD: Okay. Clearly -- I don't know how to
10 phrase that. I'll make one statement and I'll go back. There
11 was a clear conflict of interest of my attorney working with
12 you and not on behalf of the debtors or the social (unclear)

13 THE COURT: I remind you again that you are not
14 testifying now. If you want to testify --

15 MR. MOURAD: I'll do that later, you're right.

16 THE COURT: -- you'll have an opportunity.

17 MR. MOURAD: I will, thank you.

18 THE COURT: But you --

19 MR. MOURAD: I'll do it (unclear).

20 THE COURT: -- ask Mr. Gray questions, he will
21 answer them --

22 MR. MOURAD: Okay. Thank you.

23 **BY MR. MOURAD:**

24 Q. When you were appointed in the first month of April,
25 was your intention first to auction the property, the assets of

1 V&M Management?

2 A. In -- the first -- if the question is, during the
3 first month of my tenure as Trustee, was it my intention, to
4 the answ -- to auction the property, the answer is no.

5 Q. Okay. Did you have an appraisal of \$100,000 for the
6 276 units and did you hold -- did you have an appraisal for the
7 \$100,000?

8 A. Yes, I applied to the Court for authority to appoint
9 an appraiser. The Court allowed that motion. An appraisal was
10 conducted and as I recall, the value of the property at that
11 time as determined by the appraiser was \$100,000.

12 Q. As a Trustee, have you had experiences with other
13 appraisals in your profession?

14 A. Yes, sir.

15 Q. Do you know the form of appraisals, how they're based
16 on?

17 A. In a general sense, yes.

18 Q. Could you give me the first form of it? Is it based
19 on cash flow, for example? What is the income per year times--

20 A. It's --

21 Q. -- in distressed properties, three times the income?
22 That's the lowest, if you have a high (unclear) --

23 THE COURT: Are you testifying or are you asking him
24 a question?

25 MR. MOURAD: I'm asking him.

1 BY MR. MOURAD:

2 Q. How did you arrive at \$100,000, Mr. Gray?

3 A. I did not.

4 Q. Did you provide the financial statement to the
5 appraiser for him to make the determination?

6 A. We --

7 Q. What the value of the property?

8 A. We provided the appraiser all the information that he
9 requested in order to make his appraisal.

10 Q. And what was the income, the subsidies income for
11 1996, Mr. Gray.

12 A. Oh, I don't recall.

13 Q. To refresh your memory, I believe -- (pause)

14 MR. MOURAD: The low income housing, Your Honor, on
15 Exhibit 1, under 1997, if I'm reading that correctly, under
16 gross income was \$3,073,000, and the net expense was two
17 million six hundred --

18 THE COURT: Well, wait, whoa -- whoa -- whoa, is
19 this one of the returns that wasn't complete, so you used the
20 exhibits of the Trustee?

21 MR. MOURAD: Yes, Your Honor.

22 THE COURT: So let's look at the Trustee's exhibit
23 so that you can -- we can use the exhibit -- what year?

24 MR. MOURAD: 1996.

25 THE COURT: '96. 1996 I believe is Trustee's 21.

1 MR. MOURAD: 21, Your Honor? Thank you.

2 THE COURT: I think. (Pause) Yep, '96 is Trustee's
3 21.

4 MR. MOURAD: Right, I was looking at '97, Your
5 Honor.

6 THE COURT: Do you want '97?

7 MR. MOURAD: No, we -- all my focus is on '96.

8 THE COURT: Okay.

9 **BY MR. MOURAD:**

10 Q. So the rental income was \$2,826,000.

11 THE COURT: Why don't you show him the exhibit? How
12 would he know that off the top of his head?

13 MR. MOURAD: Thank you.

14 **BY MR. MOURAD:**

15 Q. Am I correct? That's the -- your own exhibits. The
16 rental income?

17 A. It says here, gross rents were \$2,826,934.

18 Q. Thank you. (Pause) So you supplied this to the
19 appraiser, he was aware of this income, and he still submitted
20 \$100,000 appraisal, am I correct?

21 A. We provided to the appraiser all of the information
22 that he requested, he had full and open access to everything.
23 I don't know sitting here specifically what he asked for and
24 what we gave him.

25 Q. Okay. Did you also supply to the appraisal --

1 (pause while conversing with his administrative
2 assistant)

3 MR. MOURAD: (unclear) the assessment.

4 MS. LUEFT: Which one? The assessment?

5 MR. MOURAD: Yes.

6 MS. LUEFT: These?

7 MR. MOURAD: Yes.

8 MS. LUEFT: Exhibit 7

9 MR. MOURAD: Your Honor, on the witness list,
10 Exhibit 7 --

11 MS. LUEFT: Your -- your Exhibit 7.

12 THE COURT: Are you offering Exhibit 7?

13 MS. LUEFT: 5 -- it's 5, 6, 7.

14 MR. MOURAD: Yes, Your Honor.

15 THE COURT: And what -- Now is this pre-bankruptcy
16 or post-bankruptcy, this appraisal?

17 MS. LUEFT: Pre-

18 MR. MOURAD: Pre- but I disclosed it to the
19 bankruptcy what the value of V&M Management.

20 THE COURT: And -- And what -- what is -- what --
21 are you offering this, you want to ask him questions about it,
22 what --

23 MR. MOURAD: I want to ask him questions.

24 THE COURT: Well, why don't you show it to --

25 **BY MR. MOURAD:**

1 Q. Are you aware --

2 THE COURT: Why don't you show it to him and ask him
3 whether he knows anything about it, has ever seen it?

4 **BY MR. MOURAD:**

5 Q. Have you seen this appraisal, was part of the
6 Bankruptcy Court, he was a creditor --

7 THE COURT: Why don't you stop testifying as to what
8 it was or wasn't and ask him whether he's familiar with it.

9 **BY MR. MOURAD:**

10 Q. Are you familiar with it?

11 A. I -- I can't say sitting here that I recall this
12 particular document. I do remember a million -- a -- a number
13 of twelve million dollars --

14 Q. Thank you.

15 A. -- being --

16 Q. You answered the question.

17 A. -- being bantered about -- in -- during the case,
18 yes.

19 Q. Thank you, you answered the question.

20 THE COURT: You understand, it's not admitted. It's
21 not an exhibit at this point. There's no authentication, he's
22 never -- he testified he doesn't know whether he ever saw it or
23 not.

24 MR. MOURAD: Yes, sir.

25 THE COURT: You don't have the appraiser in here, so

1 I don't know how you're going to get it in, but apparently
2 you're not going to get it in through this witness because he's
3 never seen it, or he says he's never seen it, so it's not going
4 to be admitted at this point in time.

5 MR. MOURAD: Okay. Let me ask you a question, Your
6 Honor. If he -- the appraiser file a claim of proof and is on
7 a docket sheet, and he had to determine as the (unclear) pay,
8 he had to have the appraisal, because he did get paid and he's
9 on the record, and Judge Kenner ruled --

10 THE COURT: Then put the records in so that I know
11 that.

12 MR. MOURAD: Okay.

13 THE COURT: You can't testify as to that.

14 MR. MOURAD: I know that, Your Honor.

15 THE COURT: Call a witness and prove it.

16 MR. MOURAD: I --

17 THE COURT: You -- What you tell me standing down
18 there at counsel table is not evidence, Mr. Mourad, it's
19 argument.

20 MR. MOURAD: Okay.

21 THE COURT: The only evidence comes in on exhibits
22 that are admitted and testimony that I hear. What you tell me
23 is so I -- is -- I -- I will totally disregard unless you tell
24 me from that witness stand, under oath --

25 MR. MOURAD: Then I will do that.

1 THE COURT: That's fine.

2 MR. MOURAD: Then that's all (unclear).

3 THE COURT: And then there are rules about what you
4 can tell me and what you can't, but right now, anything you
5 tell me not under oath is -- is nothing but argument. Proceed.

6 MR. MOURAD: Thank you.

7 BY MR. MOURAD:

8 Q. Do you remember after -- this is the appraisal for
9 \$100,000, I filed a motion and asked you to accept my offer for
10 five million five, and you did not respond to it, was there an
11 offer offered to you by Alphonse Mourad to take the probably
12 back for five million five?

13 A. I -- I don't recall.

14 Q. You don't recall a motion was filed in the Bankruptcy
15 Court ordering that -- basically the Judge to order you to
16 accept the five million five?

17 A. I --

18 Q. What exhibit that is?

19 A. I -- I don't recall.

20 Q. Okay.

21 A. There were -- this --

22 MS. LUEFT: Exhibit 6.

23 BY THE WITNESS:

24 A. -- this was a very long docket and there were lots of
25 motions filed.

1 MR. MOURAD: What exhibit number?

2 MS. LUEFT: Exhibit 6.

3 MR. MOURAD: Exhibit 6, Your Honor.

4 THE COURT: Exhibit 6 is not an offer.

5 MR. MOURAD: Well, there was a motion, too.

6 THE COURT: There's not a motion, it's --

7 MR. MOURAD: I did file a motion, Your Honor. This
8 is the commitment.

9 THE COURT: Well -- that's right. So what -- is
10 there an exhibit that you want to show the witness --

11 MS. LUEFT: Do you want to show him this?

12 THE COURT: --with respect to what you suggest was a
13 -- was an offer?

14 **BY MR. MOURAD:**

15 Q. Do you recall this was sent to your office?

16 THE COURT: What are you showing him, please?

17 MR. MOURAD: The commitment, #6.

18 THE COURT: #6.

19 **BY THE WITNESS:**

20 A. I do remember the -- the name, the Multi Loan
21 Network, and I do recall that -- that you did have alleged
22 financing for a plan of reorganization that you submitted to
23 the Court. I don't recall whether this is in connection with
24 that or -- or something else.

25 Q. Okay. (Pause) Mr. Gray, as a Trustee, if your

1 appraisal comes up with \$100,000 value, and the sole
2 shareholder comes in with a commitment, five million five, it's
3 it to the best interest to serve the current Trustee to accept
4 the highest offer on the table? That's your job, right?

5 A. My job as a Chapter 11 Trustee was to administer the
6 -- the assets of the debtor in the interest of the bankruptcy
7 estate and to maximize the value of the estate.

8 Q. Okay. Now we'll go up to step two. Did you -- were
9 you a co-applicant with Beacon Management to achieve tax
10 credit?

11 A. I heard Mr. Cohen's testimony this morning and I must
12 admit that I didn't recall the details of that, but I didn't
13 hear Mr. Cohen say that I was co-applicant, nor do I recall
14 being a co-applicant. I know that I cooperated with the -- the
15 plan proponent, the -- that -- of which Mr. Cohen was part, Mr.
16 Cohen's company was part, to secure tax credits for the
17 rehabilitation of the property, but I don't know specifically
18 whether I was a co-applicant or not.

19 Q. Did you meet with the director --
20 (pause to converse with his administrative assistant)

21 Q. --let me show you Exhibit 19, if that will refresh
22 your memory.

23 A. Yes, I -- I -- I've read the document.

24 Q. Can you explain to the Court what it means attached
25 is one-stop application?

1 A. I'm afraid I can't. I -- I can only hypothesize that
2 this was the name given to the application that was submitted
3 to the Department of Housing and Community Development for the
4 allocation of low income housing tax credits.

5 Q. But Mr. Cohen and Beacon Residential joint ventures
6 -- you testified today, they brought a tax credit, you were not
7 needed, you were not part of applicant. I hear here a
8 contradictory.

9 THE COURT: I think what he testified to was
10 consistent with this letter. My notes indicate that he
11 testified that he had to demonstrate in order to get the tax
12 credits what he called site control. He had to have the
13 owner's consent by way of a purchase and sale agreement, or I
14 think he said a letter, and then I assume that Exhibit 19 is
15 the site control letter and I assume the application was theirs
16 and the -- this was Mr. Gray saying, I'm in -- I control the
17 site as Trustee and they are going to buy the property from me.
18 Is that what -- what your understanding is?

19 THE WITNESS: My -- My understanding, sir -- Your
20 Honor.

21 THE COURT: So if you're going to paraphrase the
22 witness's testimony, please be careful to not testify to what
23 you wish the witness had said, but actually paraphrase it
24 correctly. Proceed.

25 MR. MOURAD: Okay. Let me --

1 **BY MR. MOURAD:**

2 Q. When you filed your application for the tax credit,
3 was the ownership required?

4 MR. MOORE: Your Honor, I object, I think it
5 mischaracterizes the evidence. I thought he testified that he
6 -- he wasn't sure that it was his application, he thought it
7 was the proponent's.

8 THE COURT: Do you understand the question, Mr. Gray

9 THE WITNESS: Yes, Your Honor, I think so.

10 THE COURT: Can you answer it?

11 THE WITNESS: Yes, I -- I -- I -- it's my
12 understanding that this application was not my application as
13 Trustee, that it was the plan proponent's application, which I
14 cooperated, because I was the holder in interest of the assets
15 in which -- to which these -- these tax credits would
16 ultimately be applied. That's my understanding of -- of the
17 process that we participated in in order to secure these tax
18 credits.

19 **BY MR. MOURAD:**

20 Q. But the requirements of his Chapter 42D by the IRS,
21 the owner who owned the land and the business has site control
22 and not the Trustee. You were the manager, you were not the
23 owner, so you -- you did not -- you didn't apply for the tax
24 credit.

25 THE COURT: Is there a question, or is this more --

1 MR. MOURAD: A question.

2 THE COURT: Is this your legal argument or is this--

3 MR. MOURAD: Make it a legal argument, Your Honor.

4 THE COURT: Well, fine. You make the legal

5 arguments at the end. Go ahead.

6 MR. MOURAD: Okay, thank you. Then I'll -- I'll go

7 on.

8 **BY MR. MOURAD:**

9 Q. In September 26, --

10 THE COURT: What year, sir?

11 MR. MOURAD: 1997. I'm not an attorney, Your Honor,

12 you got me, I'm going to read his transcript, is that proper?

13 You tell me. Because there were three attorneys who knew tax

14 credit and they were trying to disqualify Stephen Gray and

15 award Mourad-Owens on site control.

16 THE COURT: What transcript are you --

17 MR. MOURAD: It's the September 26, 1997.

18 THE COURT: Is it part of this record?

19 MR. MOURAD: Yes, except we added a few pages to it.

20 What number is it on the --

21 THE COURT: Whoa, whoa, whoa, whoa, what do you mean

22 you added a few pages to it?

23 MS. LUEFT: You didn't add it. It was incomplete.

24 MR. MOURAD: Was incomplete, Your Honor, nobody said

25 I'll allow it, we add --

1 THE COURT: No, I didn't say I'd allow it.

2 MR. MOURAD: Oh, I'm sorry.

3 THE COURT: You said you wanted to -- you wanted to
4 put in pages 7 --

5 MS. LUEFT: Submit the whole thing.

6 THE COURT: -- is this Exhibit 13?

7 MS. LUEFT: Yes.

8 MR. MOURAD: Yes, Your Honor.

9 THE COURT: Pages 74 through 77?

10 MR. MOURAD: Yes, Your Honor.

11 THE COURT: All right. And -- And what is the
12 subject matter of pages 74 through 77?

13 MR. MOURAD: Well, Ms. Gumble testified that owner
14 has site control. Mr. Gray is a joint applicant, he joined the
15 application at the Section 541, he has legal title to the
16 property.

17 THE COURT: Is that even a dispute? I mean, the
18 estate, property of the estate, that's Section 541 of the
19 Bankruptcy Code, and the Chapter 11 Trustee is -- holds the
20 property of the estate. So what's the issue? I mean, I don't
21 think -- I -- do you dispute that, that this was property of
22 the estate?

23 MR. MOORE: Certainly under Section 541, all
24 property of the estate vests in a Trustee.

25 THE COURT: Yeah.

1 MR. MOORE: I think Mr. Mourad is somehow trying to
2 argue there was some form of change of ownership that changed
3 the tax status is as far as I can glean.

4 THE COURT: Is that the point that you --

5 MR. MOURAD: Well, under the (unclear) the owner is
6 who owns the land -- who's on the deed, on the Registry he is
7 the owner, not the Trustee. I mean --

8 THE COURT: Well, you're wrong. The Trustee
9 succeeds under the Bankruptcy Code, 11 USC Section 541 to all
10 property of the estate. He doesn't have to go record a deed.
11 It's by operation of law. So what is 74 through 77 -- let me
12 see 74 through 77?

13 MR. MOURAD: Maybe what I'm doing to 7 --

14 THE COURT: Let me see -- Let me see 74 through 77.

15 MR. MOURAD: This is 77, you can give it back to
16 (unclear).

17 (Pause)

18 THE COURT: What I -- I guess what I'm -- what I'm
19 asking you is, what are you trying to prove? Nobody is
20 disputing that Mr. Gray had site control as the owner of the
21 property in his capacity as Trustee of the debtor. That's all
22 this said -- this says. And -- And he acknowledges, and his
23 memory apparently was better then, he acknowledges that he --
24 he may have signed one or more applications for tax credit.
25 Why is that even relevant to the -- to the issues that we're

1 dealing with today?

2 MR. MOORE: Actually, Your Honor, you might also
3 want to at pages 32 to 33 of that exhibit on cross-examination
4 of Ms. Gumble.

5 THE COURT: Let me -- Let me ask you a very specific
6 question. Do you dispute that Mr. Gray had site control of
7 this property?

8 MR. MOURAD: Yes. He was the manager, but he was
9 not --

10 THE COURT: Do you have any evidence of that?

11 MR. MOURAD: When you appoint a Trustee, Your Honor,
12 is he not, because -- yeah, the deed says that the property
13 owns, land in that position was the owner, Alphonso Mourad, not
14 Stephen Gray. So if there is a --

15 THE COURT: As it says, it's V&M Management, Inc., I
16 assume.

17 MR. MOURAD: And if there's a profit, it flows to a
18 shareholder, there's two entities here appear on that. One is
19 the sole shareholder, Alphonse Mourad, where the credit losses
20 and profit flows through him. If Mr. Gray has established
21 which I -- he would be rightful so to get the 12 million
22 dollars through V&M, then I would be today a partner with
23 Beacon Management, the creditors would have been paid a hundred
24 per cent, and we would have been in a win-win situation.

25 THE COURT: So you -- you don't -- you're suggesting

1 to me that Mr. Gray in his capacity as Trustee did not own the
2 property of the estate under Section 541 of the Bankruptcy
3 Code.

4 MR. MOURAD: For ten years.

5 THE COURT: That's your position.

6 MR. MOURAD: That's correct.

7 THE COURT: Okay. And when did you ever raise this
8 issue before? You -- We -- Did you know that a sale is going
9 forward?

10 MR. MOURAD: Yes, Your Honor.

11 THE COURT: Did you objection to the sale?

12 MR. MOURAD: First of all --

13 THE COURT: Answer my --

14 MR. MOURAD: -- I have no standing.

15 THE COURT: I didn't ask you that. Did you object
16 to the sale?

17 MR. MOURAD: Yes.

18 THE COURT: And was the objection overruled?

19 MR. MOURAD: Correct, because I have no standing, by
20 Judge Kenner.

21 THE COURT: All right. Was that -- Was the -- Was
22 that overruling appealed from?

23 MR. MOURAD: I appealed it and the appeal court said
24 you have no standing because there's no equity --

25 THE COURT: Okay.

1 MR. MOURAD: -- that is coming back to the tenants,
2 but --

3 THE COURT: All right. So -- And you didn't -- Did
4 you appeal the Appeals Court decision?

5 MR. MOURAD: I could have gone higher, Your Honor. I
6 -- I'm a sole -- I mean --

7 THE COURT: Okay.

8 MR. MOURAD: I --

9 THE COURT: So the Court made a determination on the
10 sale.

11 MR. MOURAD: Right.

12 THE COURT: Based on the fact that Mr. Gray in his
13 capacity as Chapter 11 Trustee, had site control on the
14 property, it was property of the estate under the Bankruptcy
15 Code. He sold the property. You're now trying to go behind
16 that and say that he really didn't have the right to sell the
17 property, is that what you're saying?

18 MR. MOURAD: No. I'm saying I would have supported
19 him selling the property because the property had assets, a
20 gift, that I held for ten years that belong to me personally.
21 You can't have your cake and eat it. How could he sell the
22 property, establish over two million dollar profit, and IRS
23 today levied me for \$300,000 I'm responsible for for money I
24 never had. If Mr. Gray had worked with me, where's my assets?

25 THE COURT: Well, but that's a result not of Section

1 541 of the Bankruptcy Code. As I understand it, that's a
2 result of your election under sub-chapter S of the Internal
3 Revenue Code.

4 MR. MOURAD: But, Your Honor, the reason I elected
5 sub-chapter S in 1984, knowing in the future the tax credit to
6 me is an asset, and I'm able to sell it.

7 THE COURT: All right. Okay. But let -- let -- let
8 -- let me -- let's trying to break this down to small little
9 pieces. What does any of this have to do with your allegation
10 of negligence against Mr. Gray?

11 MR. MOURAD: Because, two ways: If he -- I had one
12 million dollar appraisal, I had finance of cash money to bring
13 to the table in excess of nine million dollars, pay the
14 creditors a hundred per cent versus nine dollars, and I was
15 able to take the property back and make excess of seven, eight
16 million dollar profit after 15 years of my life.

17 THE COURT: And you -- you -- you told, you argued,
18 you didn't get it through him, but you -- you suggested that
19 you filed a motion with Judge Kenner to compel him to accept
20 your offer.

21 MR. MOURAD: I also sent him a letter before the
22 motion personally, Your Honor.

23 THE COURT: All right. But you brought this matter
24 before Judge Kenner.

25 MR. MOURAD: Right.

1 THE COURT: Seeking an order directing the Trustee,
2 I don't know, to -- to sell the property to you?

3 MR. MOURAD: Correct.

4 THE COURT: And what happened with that motion?

5 MR. MOURAD: Judge Kenner respond, if I recall, he
6 said the Court have no authority, that's basically what she
7 said.

8 THE COURT: Did -- All right. Did you appeal that
9 order?

10 MR. MOURAD: I -- Your Honor, to be honest with you,
11 I have made five or six appeals and they were all denied on
12 standing. I was killed from day one when Harold Murphy, my
13 attorney, which I had -- he told me not to file a claim of
14 proof. Frankly, I was set up, that's the bottom line. That
15 was a sole conspiracy, everybody was together --

16 THE COURT: Did you know that you had made a sub-
17 chapter S election?

18 MR. MOURAD: Yes.

19 THE COURT: Okay. Did you ever revoke it?

20 MR. MOURAD: I couldn't really revoked it once I
21 filed bankruptcy because I had no more access to the
22 corporation, was under his control.

23 THE COURT: I though Mr. Jalbert testified that this
24 was a shareholder election.

25 MR. MOURAD: He was wrong.

1 THE COURT: And (unclear) put evidence in on that?

2 MR. MOURAD: Yes, I would.

3 THE COURT: Okay. Fine. Let's proceed with the
4 negligence claim. Further question to the witness.

5 **BY MR. MOURAD:**

6 Q. What was your management fee, Mr. Gray, for 1996?

7 A. I had no management fee, I was not the manager of --
8 I -- I -- I was not the manager of this property pursuant to
9 management contract.

10 THE COURT: The answer was, he didn't receive a
11 management fee.

12 **BY MR. MOURAD:**

13 Q. You did not receive a management fee?

14 A. No, sir.

15 Q. For 1996?

16 A. For no period during my involvement in this property.

17 Q. None?

18 A. None.

19 MR. MOURAD: May I have a moment, Your Honor. I
20 think that will solve all the problems, and I'm through.

21 (Pause)

22 MS. LUEFT: Mr. (unclear), which exhibit (unclear)
23 1996, please?

24 THE COURT: 1996 tax return?

25 MS. LUEFT: Tax, yes, please.

1 MR. MOURAD: No, I have a disbursement statement
2 from his accountant when he mentioned there was a million
3 dollars paid to management fee this morning and legal fee, and
4 I saw the management fee on that disbursement (unclear) fee in
5 excess of four hundred and --

6 THE COURT: Well, it would be -- it would be
7 Exhibits 15, 19, or 21, if you're looking for Trustee exhibits.
8 I don't know which year you're looking for. I wish I'd taken
9 your note book.

10 MR. MOORE: We have one here, Your Honor.

11 THE COURT: Are you looking for that eight thousand
12 and something --

13 MR. MOURAD: Has nothing to do with this. Can I
14 approach you for a moment, Your Honor? This is confidential,
15 what getting my medical, why I'm having a problem. Is that
16 okay?

17 THE COURT: No. No. I don't hear people in-camera.
18 You're not having a problem, you're doing fine.

19 MR. MOURAD: I don't think so, but I appreciate your
20 compliment, I really do.

21 THE COURT: Are you looking for the -- the million
22 dollar payment?

23 MR. MOURAD: His accountant testified this morning,
24 and it's a breakdown of his management fee for excess of --

25 THE COURT: Well, I think you're looking for Form

1 8825, I'm not sure which year.

2 (Pause)

3 MR. MOORE: Your Honor, Mr. Jalbert tells me it's
4 Exhibit #19, if that's any help to the People.

5 THE COURT: Well, let's go then, that is helpful.

6 MS. LUEFT: Thank you.

7 MR. JALBERT: Your Honor, if I may.

8 THE COURT: Where is it, Mr. Jalbert, what page?

9 MR. JALBERT: Exhibit 19, the first page, you'll
10 see, Your Honor, in the middle of the page there's a million
11 and four thousand.

12 MS. LUEFT: Here.

13 THE COURT: Right.

14 MR. JALBERT: If you go to the very end of that
15 exhibit, it's third to the last page, Your Honor, the top
16 there, statement one is a -- is a recapitulation of what makes
17 up that one million four?

18 THE COURT: Ah, thank you. Do you have it now, Mr.
19 Mourad?

20 MS. LUEFT: It's Exhibit 19?

21 MR. JALBERT: Exhibit 19.

22 THE COURT: Exhibit 19, third to last page.

23 MR. JALBERT: Third to last page of our exhibit.

24 MS. LUEFT: Okay.

25 THE COURT: He's showing it to you. Accept his

1 assistance.

2 MS. LUEFT: Okay, here we go. Thank you.

3 MR. MOURAD: (unclear) his management fee.

4 MS. LUEFT: This is the one here. Here it is.

5 MR. MOURAD: Okay.

6 MS. LUEFT: There it is. Thank you very much.

7 MR. MOURAD: So what I need specifically, your
8 management fee.

9 THE COURT: What are you looking for a breakdown in
10 that \$998,000?

11 MR. MOURAD: Yes, because I see his management fee
12 in four categories that he submitted to the U.S. Trustee in
13 amount of about 245,000.

14 THE COURT: Well, I -- I don't know what you're
15 looking at. Mr. Jalbert's given you what he thought you were
16 looking for. If you're looking for something else, then take a
17 minute. You want me to -- I'll tell you what. Take five --

18 MR. MOURAD: I appreciate it.

19 MS. LUEFT: Thank you.

20 THE COURT: Find it.

21 MS. LUEFT: Okay, it's in one of these exhibits

22 (End of Tape #2, Index 5651. 1:45 p.m.)

23 * * * * *

24 (Tape # 3 continues without interruption as follows:)

25 THE COURT: All right, Mr. Mourad, I've given you

1 time to find your next exhibit. Have you found what you
2 needed?

3 MR. MOURAD: I thank you, Your Honor. Yes, I did
4 find, I'll show it to Mr. Gray.

5 THE COURT: Well, is it part of the exhibit book that
6 we have as of the moment?

7 MR. MOURAD: No, but another section of a different
8 binder, but the distribution was submitted to the U.S.
9 Trustee, a monthly --

10 THE COURT: It was not one of the exhibits that you
11 submitted.

12 MR. MOURAD: No.

13 THE COURT: Show it to Mr. Moore, please.

14 MR. MOURAD: Thank you, Your Honor.

15 (Pause)

16 MR. MOORE: Your Honor, I'm not sure what the
17 relevance is but I have no objection. It's a listing of the
18 fees paid during the case.

19 THE COURT: All right, let me look at it, please.

20 MR. MOURAD: I'm very sure he got paid, Your Honor.
21 He said he (unclear)

22 THE COURT: Don't characterize it, just let me see
23 it.

24 All right, this is going to be Exhibit 20.

25 **WHEREUPON EXHIBIT 20 WAS ADMITTED INTO EVIDENCE**

1 THE COURT: Just make a note and afterwards we'll get
2 copies. You have copy of 19?

3 MS. LEUFT VOICE: Did you give him a copy of 19?

4 MR. MOORE: Yes, he did. Thank you, Your Honor.

5 THE COURT: Okay, there's 19, and that's number 20,
6 let's go.

7 MR. MOURAD: Also I would like to also, Your
8 Honor --

9 THE COURT: Do you want to examine the witness with
10 respect to Exhibit 20?

11 MS. LEUFT: That's why you --

12 THE COURT: Do you want to ask him about it?

13 MR. MOURAD: Yes, in Exhibit 20 --

14 THE COURT: He hasn't seen it. We've all been
15 looking at it. He has no idea what it says.

16 THE WITNESS: Yes.

17 BY MR. MOURAD:

18 Q. So you do acknowledge you have received a management
19 fee?

20 A. No, I did not receive management fees at any time
21 from Mandela Apartments, V&M Management. What you showed me
22 was a list of disbursements for professional fees as allowed by
23 the Court, but those were not management fees. That was
24 compensation as Trustee that I applied for to the Court and the
25 application was allowed.

1 Q. The Court allowed it and you did not apply for it? I
2 don't understand, they just gave you?

3 A. No, no. The distinction is that it's not a
4 management fee. It is compensation as Chapter 11 Trustee for
5 the debtors in this matter.

6 Q. I'm confused.

7 MR. MOURAD: Could Your Honor help me with this?

8 THE COURT: You asked Mr. Gray whether he'd been paid
9 management fees.

10 MR. MOURAD: Correct.

11 THE COURT: He answered in the negative. You then
12 showed him Exhibit 20 which apparently is a schedule of
13 professional fees that were allowed by the Court and paid by
14 Mr. Gray in his capacity as Trustee.

15 MR. MOURAD: Is it not management fee, Your Honor?

16 THE COURT: Not in the sense that I would have
17 considered it was a management fee. He's entitled to
18 compensation under the Bankruptcy Code --

19 MR. MOURAD: Oh, I see.

20 THE COURT: -- as Trustee, and I presume that those
21 were the Trustee's fees that you applied for and the Court
22 allowed. You characterized them as a management fee. I would
23 not characterize them as such. I would characterize them as
24 Trustee compensation pursuant to the Bankruptcy Code.

25 BY MR. MOURAD:

1 Q. But you were paid for those two years, compensation
2 for two years for an excess of \$250,000?

3 A. I don't recall the exact amount but yes, I was paid
4 compensation by the estate as allowed by the Court.

5 Q. Okay. I would like Stephen exhibit --

6 THE COURT: What exhibit number?

7 MR. MOURAD: #3, Your Honor.

8 THE COURT: All right, wait a minute. Before we go
9 too far, who's got Exhibit 20?

10 MS. LEUFT: Oh, you do.

11 MR. MOURAD: I do, Your Honor.

12 THE COURT: We want it.

13 MS. LEUFT: Yes.

14 THE COURT: We get to keep the exhibits. Thank you.

15 MS. LEUFT: You have to give it --

16 THE COURT: Now what exhibit -- just move it up
17 here. If anybody needs it they can have it.

18 What exhibit is this Steven Slavin exhibit that you
19 just referred to?

20 MR. MOURAD: Exhibit 3, Your Honor.

21 THE COURT: Exhibit 3 has not been admitted at this
22 point, and for what purpose are you offering it? Are you
23 offering it? Do you want to ask the witness questions about
24 it?

25 MR. MOURAD: I would like him to read it. It's only

1 a page. It speaks for itself.

2 THE COURT: Go ahead, Mr. Moore.

3 MR. MOORE: I was going to say, Your Honor, it only
4 speaks for itself once it's authenticated by a witness, and
5 this document hasn't been authenticated. It looks as if -- it
6 says "draft" on it.

7 THE COURT: Well, I guess you can ask the witness
8 whether the witness is familiar with it or if he's seen it
9 before you go from there.

10 MR. MOORE: That's fine.

11 THE COURT: So show Mr. Gray Exhibit #3. You may
12 inquire with respect to his familiarity and knowledge about it.

13 (Pause)

14 BY MR. MOURAD:

15 Q. Could you read the second page to the Court?

16 A. This is on the --

17 MR. MOORE: Your Honor, objection. I don't know if
18 the witness has authenticated the document.

19 THE COURT: Are you familiar with this document at
20 all, Mr. Gray? Have you ever seen it before that you know of?

21 THE WITNESS: Not that I recall, Your Honor.

22 THE COURT: You'll have to put this in through
23 another witness. Mr. Gray can't identify this as an exhibit.
24 It's not self-authenticating in any fashion, so you may not
25 inquire with respect to -- Exhibit 13 (sic) is not admitted.

1 Bring Mr. Slavin in. Wasn't he on the list?

2 MR. MOURAD: Your Honor, I filed an affidavit because
3 I'm indigent and I couldn't subpoena all these witnesses. So I
4 did the best I can, you understand.

5 THE COURT: And I appreciate that, sir, but that
6 doesn't help, that doesn't make the exhibits any more or less
7 admissible. Thank you.

8 MR. MOURAD: I understand, but when you're a victim,
9 you're a victim. What can I say? You know I would like to
10 have twenty witnesses today, but I can't. So I did the best I
11 can for the limit.

12 THE COURT: All right, move on.

13 FEMALE SPEAKER: Do you want to go back to this item?

14 BY MR. MOURAD:

15 Q. Mr. Gray, in 1997, who was the owner of V&M
16 Management?

17 A. In 1997 who was the owner of V&M?

18 Q. V&M Management.

19 A. If your question is, is who owned the shares of V&M
20 Management, I believe they were held in the name of Alphonse
21 Mourad.

22 Q. And how were you awarded the tax credit when the
23 shares owner, he's the one who's entitled to tax credit under
24 Section 42(d) according to IRS regulations. That much I was
25 told.

1 MR. MOORE: Object, Your Honor. I think it assumes
2 facts that are not in evidence. It also calls for a legal
3 conclusion. Mr. Gray is not a lawyer.

4 THE COURT: Well, we've been over this ground before.
5 You can argue the law if you like, you can put in other
6 witnesses, but if you're asking Mr. Gray for his expert opinion
7 as to how he was able to use the tax credits, I'm not sure he's
8 qualified, but you can ask him that if you want.

9 Mr. Gray, do you know whether tax credits are an
10 attribute that goes to the owner of the property or the
11 shareholder of the owner, do you know?

12 THE WITNESS: Only through my experience in this
13 case, Your Honor, and all I know is that we cooperated with the
14 application of the plan proponent. The Department of Housing
15 and Community Development as I recall the name who jealously
16 guards the distribution of these tax credits went through this
17 process in great detail and awarded the tax credits to the plan
18 proponent and concluded that it met all of the requirements of
19 the law.

20 THE COURT: Do you recall whether they asked you who
21 the shareholder of V&M Management, Inc. was?

22 THE WITNESS: Not specifically. I didn't have any
23 direct involvement with the Department of Housing and Community
24 Development.

25 THE COURT: All right. If you want to ask him any

1 more questions on that subject, go ahead.

2 BY MR. MOURAD:

3 Q. V&M Management and Mandela Residents created a shell
4 corporation, is that correct?

5 A. I believe it was Beacon -- well, Mr. --

6 Q. Cohen, and Beacon (unclear)

7 A. -- Cohen testified this morning I believe that Beacon
8 Residential Properties I think was the name of the entity along
9 with Mandela Residents Association, and I believe there were
10 some other parties he named, formed an entity which basically,
11 which proposed a plan of reorganization and the property
12 through the plan of reorganization of the debtor.

13 Q. But this partnership did not have any assets, it was
14 a shell corporation, is that correct?

15 A. Oh, I don't know what assets it had or didn't have.
16 I --

17 Q. Is this when you establish the tax credit, then you
18 sold, then you moved the tax credit to the shell corporation,
19 to Beacon Management and Mandela Residents, that's how they
20 were able to acquire the purses of Mandela?

21 A. Well, I didn't establish any tax credits. I mean, I
22 don't -- Congress does that, I think.

23 Q. But you were the main applicant?

24 A. I don't think so. I believe that the application was
25 in the name of the entity, and I don't recall the name of the

1 entity that was the ultimate owner, the buyer of the property.
2 What I did was provide the Department of Community -- the
3 Department of Housing and Community Development, if that's the
4 correct name, the letter that you referenced earlier,
5 explaining that I was the holder of the assets of V&M
6 Management as Chapter 11 Trustee and that I was prepared to
7 sell those, the assets, specifically the Mandela Apartments, to
8 the party applying for the tax credits pursuant to a plan of
9 reorganization to the extent that that plan was approved,
10 ultimately approved by the Court.

11 Q. Mr. Gray, why you didn't apply even as a Trustee for
12 the tax credit under V&M Management which would enhance the
13 creditors' position and will bring in four million dollars
14 assets to the corporation, then sell it to Beacon Management as
15 additional for twelve million dollars, what they were willing
16 to pay for Mandela? That would have created a hundred per cent
17 pay-off for the creditors and that would have created a several
18 million dollar profit to me. You had that option, the assets
19 were there. Why you didn't do it?

20 A. I'm sorry, I don't understand the question.

21 Q. Why you did not apply for the tax credit under V&M
22 Management, and then V&M Management would have the assets of
23 twelve million dollars because I was the (unclear) tax credit,
24 then sell it to Beacon. V&M was first, had the ten years'
25 duration, they're the one who qualified, you were the Trustee,

1 we were rich. You took that money away from the sole owner and
2 the creditors and you gave it all free to Beacon. Why?

3 MR. MOORE: Your Honor, I object. Mr. --

4 MR. MOURAD: He can answer the question.

5 MR. MOORE: -- Mourad is again testifying, and on top
6 of that I don't think he understands how these things work.

7 It's impossible to answer that question.

8 THE COURT: Well, I think his question, as I read his
9 question, is why didn't Mr. Gray, in his capacity as V&M
10 Management, apply for and obtain the tax credits and then sell,
11 because he would have got much more money. Is that the
12 question?

13 MR. MOURAD: Thank you, Your Honor.

14 THE COURT: If you can answer the question, answer
15 the question.

16 MR. MOORE: Thank you.

17 THE WITNESS: Your Honor, it's my recollection, and
18 please understanding that this was now seven or eight years
19 ago, and I'm afraid I've had to do a few other things since
20 then, but my recollection was that, is that the, these tax
21 credits were allocated very sparingly to parties specifically
22 for the rehabilitation of low income -- of distressed low
23 income housing property.

24 I was the, if you will, custodian of these assets as
25 Chapter 11 Trustee. My responsibility as Trustee was to

1 administer those assets and look for an ultimate resolution of
2 the case which was of benefit to the estate. I was not, as
3 Trustee, a long-term developer of such assets, nor was I by
4 profession or prior experience, a developer of such assets.

5 I did not have the financing in place which is rather
6 complicated and that as Mr. Cohen described this morning, it
7 was made up of a half a different, half a dozen different
8 sources of rather beneficial financing from various state,
9 local, federal agencies, and quasi-governmental entities, all
10 of which came together for the purpose of rehabilitating this
11 property, attracting the tax credits, rehabilitating the
12 property under the ownership of competent professional people
13 who do this for a living, and preserving an asset that was of
14 great importance to the city of Boston and the community which
15 it served.

16 As Trustee, I was not in a position for the reasons I
17 stated to do that singularly, or within the debtor entity
18 itself.

19 I hope I answered your question.

20 BY MR. MOURAD:

21 Q. Thank you. That's all. I accept it. Did you meet
22 with representative of the Boston Rehabilitative Authority, the
23 City of Boston, and the Department of Revenue on many occasions
24 or one occasion?

25 A. I did indeed. I met with all of those entities on

1 numerous occasions.

2 Q. Were you instructed that, "We want Al Mourad out at
3 any cost and you can take over the development, do whatever you
4 want?" Did they tell you specifically your mission is to get
5 Al Mourad out of ownership of Mandela?

6 A. No.

7 Q. You did not hear that from (unclear name, Claude?)
8 Shapiro, (unclear) counsel for the BRA who put me in
9 trusteeship.

10 A. I met with Mr. Shapiro on numerous occasions. I
11 don't recall him ever saying what you just said.

12 Q. Did you know about appointment of Trustee prior to
13 April 1st?

14 A. Did I know --

15 Q. Yes, did you have any meetings or any information
16 prior to April 1st that Mr. Mourad tomorrow would be ousted out
17 of his development, before you can just can reach that
18 decision?

19 MR. MOORE: Your Honor, I object. This has really
20 nothing to do with today's issues.

21 THE COURT: I will allow him to have the answer, if
22 he knows.

23 MS. LEUFT: 1996.

24 BY THE WITNESS:

25 A. I don't recall specifically but in saying that, I

1 must say that it is my experience, having served as Trustee in
2 numerous cases, that often prior to hearings for the
3 appointment of a Trustee, I get, I would get calls from the
4 U.S. Trustee's Office asking about availability and interest in
5 taking on a case in which a, for which a Trustee may be
6 appointed.

7 I don't recall whether that happened in this case or
8 not but it was pretty standard procedure.

9 Q. Did you recall on that morning before even the trial
10 began for a Trusteeship front page of the *Boston Globe* having
11 my picture and saying Mourad will be ousted tomorrow and the
12 governmental entities will gain control of Mandela, the Boston
13 Development Authority, Department of Revenue, and the City of
14 Boston, was the front page?

15 A. I don't recall reading the *Boston Globe* that morning
16 or the day before. I read the *Globe* sometimes and sometimes I
17 don't. It's a matter of whether I have time.

18 THE COURT: I've given you some latitude, but
19 remember, let's go back to what we're talking about. The cause
20 for the, whether it's sufficient cause for the late claim and
21 the alleged negligence of Mr. Gray. Not what other people may
22 have done to you, either perceived or real. That's not during
23 his tenure so that's not --

24 MR. MOURAD: You've gone more than the distance.
25 I've been in courts, you've given me a lot of leeway and I

1 appreciate it, I really do. You've been helpful me, and it's
2 not your fault. You can see I'm emotional. I know what
3 happened.

4 THE COURT: I understand and that's why --

5 MR. MOURAD: I appreciate it.

6 THE COURT: -- I'm giving you some leeway, but let's
7 get back to the questions.

8 MR. MOURAD: Mr. Gray -- I'll end it quickly, the
9 questions -- there isn't much --

10 THE COURT: I'm not trying to force you to end it
11 quickly. I'm trying to get you to refocus on the issues that
12 we're trying today.

13 MS. LEUFT: Focus on this issue, please.

14 MR. MOURAD: Pardon me?

15 MS. LEUFT: This is the date of the letter.

16 MR. MOURAD: Mhmm.

17 MS. LEUFT: You were there, not Gray. (unclear)

18 (Low-voiced conversation)

19 (Pause)

20 BY MR. MOURAD:

21 Q. Now on August 26, we go back to Exhibit 19 --

22 THE COURT: What year, please?

23 MR. MOURAD: 1997.

24 THE COURT: Thank you.

25 MS. LEUFT: Show him the letter.

1 THE COURT: I don't know -- (unclear) why don't you
2 give this to Mr. Gray.

3 MS. LEUFT: Show it to him.

4 [Pause]

5 BY MR. MOURAD:

6 Q. Did you file the initial application for the
7 Department of Housing and Community Development as an owner,
8 period, did you or did you not?

9 THE COURT: Do you have the application? Because I'm
10 not sure -- you're asked him whether he applied, and that's not
11 the application. That's a transmittal letter.

12 MR. MOURAD: Correct.

13 THE COURT: And I don't know, I mean you're asking
14 him to remember what he did seven or eight years ago. The best
15 evidence of that would be the application. Do you have the
16 application?

17 MR. MOURAD: I couldn't locate, Your Honor. I tried.

18 THE COURT: All right, if you know the answer, Mr.
19 Gray.

20 BY THE WITNESS:

21 A. I'm afraid I don't know specifically. What it says
22 here is that,

23 "Attached is a one stop application from Mandela
24 Apartments applying for the allocation of low income
25 housing tax credits."

1 It doesn't say who the applicant was. I don't recall whether I
2 was specifically an applicant or not. It does go on to state
3 that the site is under the control by V&M Management which was
4 currently a debtor in Chapter 11 and that I was its Trustee,
5 and as Trustee I had, well, in the parlance of tax credits I
6 guess I control.

7 Q. You control?

8 A. Excuse me?

9 Q. You said you control the tax credit?

10 A. No.

11 Q. As a Trustee.

12 THE COURT: He said he controlled the site.

13 BY MR. MOURAD:

14 Q. When you say the site, does that mean the land and
15 business?

16 A. I would describe it as the assets, including the
17 lands and --

18 Q. But that was it, the asset has to be the land and the
19 business? That's what the --

20 A. Yes, but I only make the distinction between Trustees
21 control assets, not sites, but so, but I think in this --

22 THE COURT: Well, it's a different vocabulary
23 depending on what game you're playing in I guess.

24

25 BY MR. MOURAD:

1 Q. And the Mandela residents, they were co-applicants
2 with you and Beacon Limited Partnership?

3 A. It says that they are the sponsors and developers of
4 the proposed redevelopment effort, and they were the proponents
5 along with Winter Hill Savings Bank and myself of a plan of
6 reorganization that was ultimately approved by this Court.

7 Q. Well, the ultimate plan of the Boston Redevelopment
8 Authority (unclear) to win a victory in the city of Boston
9 Affordable Housing that Beacon Management, because of their
10 expertise in tax credit and housing, that they will help the
11 Mandela residents to manage the development, give them their
12 expertise, and then turn it over to them for one dollar? Do
13 you recall that?

14 A. I believe as a matter of policy, that governmental
15 agencies at that time generally were interested in ultimate
16 tenant ownership. I don't recall specifically whether the BRA
17 or the City of Boston or any particular agencies, but as a
18 matter of general public policy at the time that was a thrust
19 in the low income housing market.

20 Q. But the purpose is for ownership of the residents?
21 The ultimate plan for the residents to have the deed to the
22 units?

23 A. The -- as Mr. Cohen testified this morning, I didn't
24 recall these details but he described it as a part of the
25 partnership principles of the entity that ultimately took

1 ownership of Mandela Apartments. That was one of the
2 principles of that partnership, yes.

3 Q. And when you closed the purchasing agreement between
4 V&M Management, the sole shareholder, transferred the assets to
5 Beacon Management, did you witness all the documents that they
6 were signed by the Boston Development Authority, the 121(a)
7 agreement, the 6(a) agreement, the partnership between Mandela
8 Residents and Beacon Residents? Did you secure as a Trustee?
9 Their agreement was recorded on the deed. It's not what we
10 think. Was all these documents from the BRA and City of Boston
11 Department of Revenue, part of the deed that's supposed to earn
12 the tax credit, that much I know, were they recorded?

13 A. I don't know specifically what was recorded on the
14 deed. I know I participated in the closing, I executed all of
15 the documents that I was required to execute. I certainly
16 didn't read them all. My counsel and various other lawyers in
17 the case participated in the closing. It was, as far as I
18 know, very professionally well done, and as I said, I executed
19 whatever documents I was required to execute.

20 Q. So to your knowledge, they all should have been
21 recorded and you supervised all the documents and they executed
22 them and you made sure everything was on record?

23 A. No, I didn't make sure everything was on record.
24 That would have been my attorney's responsibility, and the
25 attorneys of the buyer more appropriately, I would think. So I

1 don't know, I certainly didn't go to the Registry of Deeds and
2 record documents, nor do I know what was recorded and what
3 wasn't, or what should have been recorded and what shouldn't
4 have been.

5 Q. How about your attorney, Paul Moore, who was being
6 paid substantial amount of money, clearly you paid a million
7 dollars between your fee and the attorneys. Would they have
8 responsibility to make sure all these agreements with Beacon
9 Management and Mandela Residents were recorded as part of the
10 deed? They were paid for it.

11 A. I don't know specifically but I don't think it would
12 have been my attorney's responsibility to make sure what
13 documents were recorded in the deed. I would -- it's kind of a
14 guess, but I would think that would have been the
15 responsibility of the buyer, to make sure that the deed was
16 properly recorded in the buyer's name --

17 Q. So you had no responsibility once you said "I'm going
18 to transfer the assets to Beacon Management and I'm out of
19 here," then you have no more responsibility --

20 A. Well, I had the --

21 Q. -- is that what you're saying?

22 A. I had the responsibility of the ongoing management of
23 the estate.

24 Q. So what happens today if we go to Registry of Deed,
25 and none of those documents are recorded for the protection of

1 the residents, would you have any liability?

2 A. I don't think so ,but I would consult my attorney --

3 Q. Well, you had --

4 A. Excuse me --

5 Q. -- you're the Trustee, to protect everybody and --

6 THE COURT: Let's not argue with the witness. You
7 ask him questions, he'll answer them. You don't have to like
8 his answers but they're his answers, not yours.

9 MR. MOURAD: Okay.

10 BY MR. MOURAD:

11 Q. Other question, part of the application, I know on
12 the tax credit is a requirement extension of Section 8 for 15
13 years. That's mandatory, you have to have it. Did you renew
14 the Section 8 under your Trusteeship prior to Beacon taking
15 over, and did you get an extension of Section 8 for 15 years?

16 A. We did apply for and get a renewal of the Section 8
17 contract, but I don't think it was for 15 years, I think it was
18 for two years is my recollection.

19 MR. MOURAD: Well, that's a violation, because I know
20 it's mandatory. I was approached, Your Honor, on tax credit
21 and I know that requirement and you have to have 15 years --

22 THE COURT: Let's remember what we're here for.

23 MR. MOURAD: Sorry. Sorry --

24 THE COURT: We're not here on behalf of the Mandela
25 Residents, we're not here on behalf of any governmental

1 authority claiming violations of tax credit obligations or
2 otherwise. We're here on your allegation of negligent
3 administration of the estate.

4 MR. MOURAD: I'll close a statement, Your Honor, I
5 think ask other questions, this is closing statements.

6 BY MR. MOURAD:

7 Q. Mr. Gray, you could have, in your capacity, access
8 first of all to my appraisal and you cannot allow me to
9 refinance, I had nothing but money on this development. I
10 could have brought nine million dollars to the table, I could
11 have paid the creditors hundred per cent on a dollar, not nine.
12 My family today still liable for two million dollars support
13 and wages, that's negligence.

14 Second, if you don't want to go my people, you're going to
15 file the tax credit under V&M Management which is a gift to me.
16 That's the point of S corporation, that losses, the profit, and
17 the credit passes through the owner. In this case here, I got
18 nothing but the negative. Now I'm liable to IRS a levy in
19 excess of 300,000, I'm indigent, my tax credit's gone south, my
20 appraisal has no value, and I ran the space for 15 years, I'm
21 the money man you're looking at. Why is it not acknowledged
22 talking to me? Why do you not work with me?

23 In fact, when I brought my appraisal to the Mandela
24 Residents, I was barred, I had to file a motion to get access
25 to walk in my own property after 15 years. Why? I have all

1 the answers for you. It's a win-win situation, we can afford
2 one, we won't be here today, won't we?

3 MR. MOORE: Your Honor, is this one compound
4 question?

5 THE COURT: If he understands the question he may
6 answer it.

7 THE WITNESS: I do think it's appropriate, Your
8 Honor, that I comment on Mr. Mourad's statement, although I'm
9 not quite sure what the question is.

10 THE COURT: The question is why didn't you deal with
11 him.

12 THE WITNESS: The -- we took control -- I took on
13 this trusteeship at a time that the property was in absolutely
14 a desperate condition. Physically, Mr. Jalbert testified as
15 to the condition of its books and records, the condition of the
16 physical property was worse. The condition in the community
17 was very difficult. It needed a strong force both to bring the
18 appropriate financing to the property for its rehabilitation
19 which was desperately needed. It needed a developer that could
20 bring all of the various factions in this case, including a lot
21 of governmental agencies together around the rehabilitation of
22 this property.

23 We, I as Trustee, interviewed, talked to, worked with
24 a number of different entities to be, provide the cornerstone
25 of that process as a plan, proponent for a plan of

1 reorganization. We ultimately, I ultimately chose to support
2 the plan of reorganization proposed by Beacon Residential
3 Properties, the Mandela Residents Cooperative Association,
4 Winter Hill Savings Bank who was the secured party in this
5 case. That was one of five or six plans of reorganization that
6 were ultimately filed in this case, including one filed by Mr.
7 Mourad in connection with a gentleman named Mr. Owens. I'm
8 sorry, I think it was Mr. Mourad's daughter in connection with
9 Mr. Owens.

10 Any one of these other plan proponents I presume
11 could have gone to the state, including the Owen -- Mourad-
12 Owens group could have gone to the state and applied for these
13 tax credits. The tax credits were absolutely critical in
14 getting the kind of financing required to, one, provide a
15 benefit to the estate in the form of dividend to creditors, to
16 satisfy the significant secured obligations in this matter,
17 those of Winter Hill Savings Bank, Boston Water & Sewer,
18 Commonwealth of Massachusetts, City of Boston, all of them had
19 secured claims as I recall; and to provide for the
20 rehabilitation of the property, which was the only way of
21 creating value in this situation such that secured claims could
22 be satisfied and a dividend was available to unsecured
23 creditors.

24 We needed the tax credits to do that, we needed the
25 cooperation of a wide variety of agencies and entities. Any of

1 the plan proponents could have presumably done that, including
2 Mr. Mourad or his family and Mr. Owens. Ultimately, the
3 Court, after a very lengthy process, confirmed the plan of
4 reorganization filed by me as Trustee, Beacon, Winter Hill, and
5 the Residents' Cooperative Association. That plan was
6 confirmed, it was consummated, the property was rehabilitated,
7 and to my knowledge, based on what I've read and seen, has
8 operated to the benefit of the community it serves very
9 successfully ever since.

10 It was my judgment at the time that that was not
11 achievable as Trustee through the debtor corporation or through
12 Mr. Mourad and Mr. Owens as plan proponent or any of the other
13 plan proponents that were either filed plans ultimately or who
14 we discussed possible redevelopment kind of reorganization with
15 throughout the tenure of the case.

16 A. Does that answer your question, sir?

17 Q. Yes. I'm going to refer, you mentioned the property
18 was in disaster conditions and cash flow unsolvable, and I want
19 to refer to Exhibit 4.

20 MR. MOURAD: Exhibit 4, Your Honor, when I filed
21 bankruptcy, that was done by the U.S. Trustee, Eric Bradford,
22 and the Examiner, and I was given 90 days for reorganization
23 plan, and those were the budget I have to live under. As you
24 can see, I was able to rehab two units a month, clear profit,
25 for the shareholders 19,000 --

1 THE COURT: Are you saying -- is this part of the
2 court records?

3 MR. MOURAD: Yes. That was the record. This is what
4 they did. The Examiner and the Trustee, I mean --

5 THE COURT: Where is this in the court records?

6 MR. MOURAD: We can find it on the docket sheet. I
7 don't have the docket sheet --

8 THE COURT: You're representing to me that this was
9 filed with the Court?

10 MR. MOURAD: Yeah, the Examiner did that. I didn't
11 do this one. They sat down with my accountant, Mr. Braunstein
12 who get paid, and they put a limit on me. They said for
13 management fee, you can see, we can allow you \$7,500, you can't
14 sign any excess check over 2,000, 2,500, and you will run this
15 development through (unclear) Finance, bring sufficient money,
16 pay all the creditors, and then take your property back.

17 THE COURT: And why is this relevant? This is before
18 Mr. Gray was appointed.

19 MR. MOURAD: Well, I'm sure the comparison he's -- he
20 said the property was insolvent, but what's relevant --

21 THE COURT: He didn't say it was insolvent. He said
22 that the books and records were in terrible shape and the
23 physical condition of the property was worse. He didn't say
24 anything about solvency or insolvency.

25 MR. MOURAD: I wish I knew that statement was going

1 to be said here today because I have a complimentary physical
2 report from HUD --

3 THE COURT: What you have and what is here today --

4 MR. MOURAD: I know --

5 THE COURT: But the question is why does this Exhibit
6 4, which you state represents -- is a budget that was given to
7 you by the U.S. Trustee's Office and the Examiner, all of
8 which predates Mr. Gray's appointment, why is this at all
9 relevant to the issue of Mr. Gray's alleged negligence in
10 administration of the estate?

11 MR. MOURAD: Because Your Honor, if you look at the
12 cash here, what I paid the Winter Hill Bank first mortgage over
13 \$30,000, he didn't pay no mortgages at all. What happened to
14 all his money after his management? It went to his legal fees,
15 went to everybody that was associated with him. We're
16 practically, we'll all being robbed, that's what's relevant.
17 The cash flow speaks for itself. He had no payment to anybody.

18 THE COURT: All right, Exhibit 4 is not admitted. If
19 you can prove what you just said, that's fine; but this doesn't
20 even tend to prove it, so --

21 MR. MOURAD: Okay, I'm done, Your Honor. Thank you,
22 I appreciate it.

23 THE COURT: Do you have any further questions for Mr.
24 Gray?

25 MR. MOURAD: No, thank you. I'll take the stand for

1 a closing statement --

2 THE COURT: Wait, we're not there yet. Mr. Moore
3 gets an opportunity to examine.

4 MR. MOURAD: Okay.

5 THE COURT: Okay, you've completed your examination
6 of Mr. Gray. Do you have any questions, Mr. Moore?

7 MR. MOORE: I do, Your Honor, thank you.

8 **CROSS-EXAMINATION**

9 **BY MR. MOORE:**

10 Q. Mr. Gray, you talked a little bit about the plan
11 process, briefly summarizing it. Is it your recollection that
12 the initial disclosure statement and plan filed on your behalf
13 was not approved by the Court?

14 A. It is.

15 Q. And do you recall at one point the Court, one or more
16 points, the Court issuing an order to show cause why the case
17 shouldn't be dismissed?

18 A. Yes.

19 Q. And do you recall why she issued that order?

20 A. Because the case was very contentious. There were --
21 the docket was extraordinarily long. There were lots and lots
22 of extraneous motions being filed in the case by various people
23 who thought they had an involvement in the case, including Mr.
24 Mourad. The Court was frustrated with the lack of the
25 reorganization process, and that it was not clear that it was,

1 there was a reorganization process that could take place
2 because of, this is what I described before, the
3 extraordinarily complex nature of bringing all of the various
4 forces together, and aligned towards a feasible plan of
5 reorganization.

6 Q. And do you recall the aggregate amount of secured
7 claims against this real estate as of the time you were
8 appointed?

9 A. It was ten or twelve million dollars.

10 Q. Okay, and you said Winter Hill held the first lien?

11 A. Yes.

12 Q. And how much, what was the aggregate amount of Winter
13 Hill's asserted lien?

14 A. If I might refer to some papers I have, because I
15 don't remember all of these.

16 Q. Will that refresh your recollection?

17 A. Yes. (Pause) The claim filed by Winter Hill was
18 \$2,976,770 and that was, I think that was an initial claim that
19 was interest ongoing during the pendency of the case, because
20 we did not pay interest during the case.

21 Q. And do you recall what Winter Hill -- Winter Hill was
22 a co-proponent of our plan, is that correct?

23 A. They were.

24 Q. Do you recall what they agreed to accept under the
25 plan?

1 A. \$1,650,000.

2 Q. And do you recall how active Winter Hill was in the
3 case?

4 A. They were extraordinarily active in the case.

5 Q. And was it your understanding in dealing -- strike
6 that. Were relations between you and your counsel and
7 Winter Hill fairly adversarial throughout the case?

8 A. Very adversarial.

9 Q. And was Winter Hill throughout the case motivated by
10 maximizing its own recovery?

11 A. They were indeed.

12 Q. Is it your recollection that Winter Hill was, had any
13 reason not to maximize the proceeds payable under the plan?

14 A. None.

15 Q. At all times they asserted a first lien against all
16 proceeds under the plan, is that correct?

17 A. They did, although I believe they were, there were
18 some tax liens that were ahead of them, real estate tax liens.

19 Q. Do you recall Mr. Mourad alleged, I think in one of
20 his pleadings or filings with the BAP that part of your
21 negligence was in not paying debt service and thereby creating
22 taxable income that should not have been created. Do you
23 recall why it is you didn't pay debt service to Winter Hill?

24 A. Yes, for two reasons: First, we took the position in
25 the case that Winter Hill was under-secured and therefore not

1 entitled to interest. In addition, we sought the approval of
2 the Court for the use of cash collateral in the form of the
3 proceeds from the rents of the property to use all of the
4 rental income to benefit the operation and rehabilitation of
5 the property, and the Court allowed that motion. There was a
6 very detailed budget attached to that motion. That budget did
7 not include the payment of either principal or interest to
8 Winter Hill or any debt service to anyone else.

9 Q. And Mr. Mourad referred to an appraisal that was
10 commissioned on your behalf during the case. Was that
11 appraisal obtained in part to address issues raised by secured
12 creditors as to whether they were fully secured or not?

13 A. In part.

14 Q. And with respect to all of the secured creditors,
15 that appraisal showed that all of them were under-secured,
16 correct?

17 A. Yes.

18 Q. And it was your understanding that under applicable
19 law, you're not required, indeed permitted to pay interest to
20 under-secured creditors post-petition?

21 A. That is my understanding.

22 Q. With respect to the condition of the property, did
23 you during your stewardship as Trustee make any effort to
24 determine the deferred maintenance or capital needs of the
25 property in order to rehabilitate them?

1 A. I did. First, just as a matter of walking through
2 the property and physically seeing its condition but not being
3 an expert in such matters myself or anyone on my staff, we
4 retained a firm called On-Site Insight who were experts in
5 assessment of cost of rehabilitation of real estate.

6 Q. And do you recall what On-Site Insight concluded with
7 respect to the property?

8 A. The conclusion was that the property was in need of I
9 believe \$12,700,000 of repairs, all of which, the largest part
10 of which were deferred maintenance in nature for the property
11 being neglected for many years.

12 Q. And with respect to that appraisal and the low value
13 it attributed to the property, do you recall the reasons for
14 that valuation?

15 A. Two principal reasons: One was the large deferred
16 maintenance, the large asbestos liability, all of which added
17 up to the \$12,700,000, and the fact that we had no permanent
18 Section 8 contract in place at a time that the federal
19 government was phasing out Section 8, site-based Section 8
20 contracts, which fundamentally meant that without the
21 rehabilitation of the property, the -- well, let me back up a
22 little bit.

23 At the time, the federal government was shifting from
24 site-based Section 8 subsidies to tenant-based subsidies or
25 voucher subsidies, so instead of a property being eligible to

1 get subsidies from the federal government, they were switching
2 over to providing vouchers for qualified low-income residents
3 who could take those vouchers anywhere and rent property.

4 Unless this property, without a Section 8 contract,
5 unless this property was rehabilitated, it would not have been
6 attractive to tenants to live there. Therefore, they could
7 have taken their vouchers some place else for, in the judgment
8 of the appraiser, the rental income in the future without
9 rehabilitation would have been negligible -- or I shouldn't say
10 negligible, would have been reduced dramatically.

11 Q. And did you or the appraiser consider any alternative
12 uses for the property?

13 A. We did.

14 Q. And what did you conclude?

15 A. Concluded that there was no alternative use to the
16 property because as a restriction on the deed, pursuant to the
17 original granting of the property by the Boston Redevelopment
18 Authority, it had to remain in the use as a low-income housing
19 property as I recall. So that there weren't any alternative
20 uses because there was no way of changing that deed
21 restriction.

22 Q. What was your understanding of the purpose for local,
23 state, and federal authorities issuing tax credits?

24 A. To provide incentives to, for investment in low
25 income housing property.

1 Q. During the course of our experience in the Mandela
2 case, did we also experience their views on using the benefits
3 of those tax credits to pay pre-existing creditors?

4 A. Oh, the tax credits were specifically, the only
5 authority to grant tax credits as I recall was to invest in the
6 rehabilitation of property, not to pay off debt.

7 Q. And as a result did that affect our ability to secure
8 benefits even with those tax creditors -- credits for creditors
9 of the estate?

10 A. Yes, it basically prohibited the use of the tax
11 credits to induce investment to pay creditors.

12 Q. So when Mr. Mourad asked you why you didn't secure
13 the tax credits for the benefit of the estate and having those
14 I guess pay them to creditors and then sell the property for
15 twelve million dollars, based on your experience, do you think
16 that is at all realistic?

17 A. I think it's not realistic at all, in fact
18 impossible.

19 Q. Would you tell us in what ways you think that's
20 unrealistic?

21 A. Well, again the only way the tax credits are gran --
22 you don't -- tax credits don't do anything for the owner or the
23 property. What the tax credits ultimately end up as, as a
24 reduction of taxable, of the payment of taxes for someone who
25 invests in the property for the purposes of rehabilitating the

1 property. So it's not like you get a tax credit and you give
2 it to a creditor, I mean you can't do that. I mean, it is --
3 a tax credit goes to someone in return for making an investment
4 in the rehabilitation of low income housing property. So it's
5 not something that's fungible, that can end up to the benefit
6 of creditors.

7 Q. And do you think in the absence of investing tax
8 credits in the property that any knowledgeable buyer would have
9 paid twelve million dollars for the property as you knew it
10 back then unapproved?

11 A. Absolutely not.

12 Q. There was a lengthy plan process during which our
13 initial disclosure statement and I believe several others were
14 disapproved, and then a second round of disclosure statements.
15 Do you recall Mr. Mourad being actively involved throughout
16 that process?

17 A. He was, although my recollection was he did not
18 submit a plan in the first round, but he did in the second
19 round.

20 Q. When you say he did, you said his daughter did?

21 A. I believe -- his family. It's my recollection it was
22 in the name of his daughter.

23 Q. And do you recall Mr. Mourad being present at
24 virtually every hearing?

25 A. I do.

1 Q. Do you recall him being present at the confirmation
2 hearing?

3 A. I do.

4 Q. And at any point prior to confirmation or the
5 effective date, did anyone other than the IRS raise any issue
6 with respect to income taxes?

7 A. Not that I recall.

8 Q. When did you first learn of Mr. Mourad's asserted
9 administrative claim?

10 A. When he filed a motion to allow the filing of a late
11 claim.

12 Q. And was that -- do you recall when that was?

13 A. Well, I happened to check the date last night. It
14 was September 17th, 1998.

15 Q. That was about a year after confirmation?

16 A. Confirmation, yes, right, confirmation was in the
17 fall. Consummation was in December and so it was about a year
18 after.

19 Q. By the way, in addition to attending hearings, do you
20 recall Mr. Mourad being on the service list in this case and
21 receiving pleadings generally?

22 A. I don't specifically recall but I presume he was.

23 Q. I would ask you to look at our exhibit binder, I
24 think you have a copy there, the black one, Exhibit 26, and ask
25 you if you're able to identify that? Last page.

1 A. This is the letter to the Clerk of the U.S.
2 Bankruptcy Court asking to enter an appearance of Alphonse
3 Mourad on behalf of himself and for V&M Management, Inc. signed
4 by Alphonse Mourad dated October 17th, 1996.

5 Q. Does that refresh your recollection that during all
6 or substantially all the case Mr. Mourad was on the service
7 list?

8 A. Yes.

9 THE COURT: You offering your Exhibit 26?

10 MR. MOORE: Yes, please, Your Honor.

11 THE COURT: Any objection?

12 MR. MOURAD: It's not in here, Your Honor, I don't
13 see it.

14 THE COURT: Last page.

15 MR. MOURAD: It's not in here.

16 THE COURT: Mr. Gray, while we're waiting, do you
17 have Exhibit 19 over there? Oh, you got it back? Okay, I'm
18 just trying to keep track of our copies, thank you.

19 MR. MOURAD: Rephrase the question. What was it?

20 MR. MOORE: He's offered that into --

21 THE COURT: He's offered that exhibit, I presume it's
22 part of the Court documents.

23 MR. MOORE: Yes, it is.

24 THE COURT: Do you have any objection? You just saw
25 it.

1 MR. MOURAD: Yeah, I don't understand it but --

2 THE COURT: You filed an appearance in this case, in
3 bankruptcy back in 1996. Mr. Moore has asked Mr. Gray, "Do you
4 know whether Mr. Mourad was on the service list?" Mr. Gray did
5 not know. He showed him the appearance. Mr. Gray says, "Yes,
6 Mr. Mourad was on the service list."

7 Do you deny you were on the service list?

8 MR. MOURAD: No, I've been on service list all along.

9 THE COURT: Exhibit 26 is admitted.

10 MR. MOORE: Thank you, Your Honor.

11 **WHEREUPON EXHIBIT 26 WAS ADMITTED INTO EVIDENCE**

12 BY MR. MOORE:

13 Q. Mr. Gray, I refer you to Exhibit 1 in the black
14 binder before you and ask you if you're able to identify that
15 document?

16 A. I am. This is a disclosure statement with respect to
17 the joint plan of reorganization of Stephen S. Gray, Chapter 11
18 Trustee, Mandela Residents' Cooperative Association, Inc.,
19 Beacon Residential Properties Limited Partnership, and Winter
20 Hill Federal Savings Bank.

21 Q. And we've referred to several disclosure statements.
22 Is that the second disclosure statement, the one relating to
23 the confirmed plan?

24 A. Yes.

25 Q. And was this filed on your behalf?

1 A. It was.

2 THE COURT: Are you offering that, Mr. Moore?

3 MR. MOORE: I am offering that, Your Honor.

4 THE COURT: Any objection?

5 MR. MOURAD: No, Your Honor.

6 THE COURT: Trustee's Exhibit 1 is admitted.

7 **WHEREUPON EXHIBIT T-1 WAS ADMITTED INTO EVIDENCE**

8 BY MR. MOORE:

9 Q. Mr. Gray, I would ask you to refer to page 59 of that
10 document under Article 11.

11 A. Yes.

12 Q. And could you read the first two sentences.

13 A. Yes. This is titled certain Section 11, entitled

14 "Certain Federal Tax Consequences," and it says,

15 "The debtor files its federal and Massachusetts tax
16 returns as a sub -- as an S corporation. As a result
17 it currently has, and as a result of the transaction
18 to be consummated pursuant to the plan, it is
19 expected to have no liability for income tax. The
20 creditors trust will file its" --

21 Q. I just asked for the first two sentences, thank you.

22 And the transactions to be consummated pursuant to the
23 plan, that was the sale of the project that we've been talking
24 about today?

25 A. Yes.

1 Q. So I would next ask you to turn to page 60, and there
2 is a paragraph, the third full paragraph in all capital
3 letters.

4 A. Yes.

5 Q. I'd ask you to read that into the record, please.

6 A. [Reading]

7 "No representations are made regarding the particular
8 tax consequence of the plan to any holder of a claim
9 or interest. Each holder of a claim or interest is
10 strongly urged to consult its own tax advisor
11 regarding the federal, state, local, and foreign tax
12 consequences of the plan."

13 Q. And is it your understanding that Mr. Mourad at that
14 time and at all times relevant to this case was the sole holder
15 of an interest?

16 A. Yes, he was the sole holder of the equity interest.

17 MR. MOURAD: Your Honor, I'm going to object to that
18 one. Is that okay?

19 THE COURT: Object to what?

20 MR. MOURAD: To saying I was a sole owner, what did
21 you read, Paul?

22 THE COURT: He said -- the answer was that Mr. Gray
23 said that as far as he knew, you were the sole holder of the
24 equity interest in the debtor, which I think is true.

25 MR. MOURAD: Okay.

1 THE COURT: You already said that.

2 MR. MOURAD: Yeah. I thought regarding something
3 else, Judge.

4 THE COURT: No.

5 BY MR. MOORE:

6 Q. Mr. Gray, I would ask you to look at Exhibit 2 in
7 this binder and tell me whether you are able to identify that
8 document?

9 A. I am.

10 Q. And what is that document?

11 A. It's a joint plan of reorganization of Stephen S.
12 Gray, Chapter 11 Trustee, Mandela Residents' Cooperative
13 Association, Inc., Beacon Residential Properties Limited
14 Partnership, and Winter Hill Federal Savings Bank.

15 Q. And was that plan filed on or about June 27th, 1927
16 -- 1997 on your behalf?

17 A. Yes.

18 THE COURT: It just feels like 1927.

19 BY MR. MOORE:

20 Q. Mr. Gray, I would ask you --

21 MR. MOORE: Your Honor, I would offer this into
22 evidence as an exhibit.

23 THE COURT: Do you have any objection to the
24 admission of the plan into evidence?

25 MR. MOURAD: No.

1 THE COURT: The plan, Trustee's 2 is admitted.

2 WHEREUPON EXHIBIT T-2 WAS ADMITTED INTO EVIDENCE

3 BY MR. MOORE:

4 Q. Mr. Gray, I'd next ask you to refer to paragraph 3.1
5 or article 3.1 on page 14.

6 A. Yes.

7 Q. Would you read the Section 3.1, "Administrative
8 Claims," read that first paragraph?

9 A. [Reading]

10 "Except as otherwise agreed by any holder of an
11 administrative claim including professional fees,
12 allowed administrative claims that arise on or before
13 the effective date shall be paid in full by the
14 creditors Trustee on the latest to occur of:
15 (i), the effective date or as soon as thereafter
16 practical;
17 (ii), within ten business days after the date on
18 which the administrative claim is finally determined;
19 and (iii), the date when the payment of such
20 administrative claim becomes due in accordance with
21 the terms, provided that all liabilities incurred by
22 the debtor in the ordinary course of business during
23 the reorganization case shall be paid in the ordinary
24 course of business when due."

25 Q. And when was the effective date of the plan?

1 A. I believe it was sometime in December of 1997.

2 Q. That's when the sale closed?

3 A. Yes.

4 Q. I would next ask you to refer to Article 7.13 on page
5 34 entitled "Exculpation," and I'd ask if you'd read that into
6 the record.

7 A. I'm sorry, which --

8 Q. 7.13 on page 35 -- I'm sorry, 34.

9 A. It's entitled "Exculpation."

10 "The creditors' Trustee, the creditors' trust, and
11 their employees, attorneys, accountants, consultants,
12 or agents shall:

13 (i), not have or incur any liability to any person or
14 entity for any act or omission in connection with or
15 arising out of the administration this plan or the
16 property to be distributed under the plan except if
17 such act or omission is determined by the final, by a
18 final order to reflect bad faith or to constitute
19 willful misconduct or gross negligence;

20 (ii), be entitled to rely upon the advice of counsel
21 with respect to their duties and their
22 responsibilities under the plan;

23 and (iii), be fully protected in acting or in
24 refraining from acting in accordance with such
25 advice, provided however that nothing contained

1 herein shall relieve the creditors' Trustee from,
2 creditors' trust from its duties and responsibilities
3 to make the payments required under the plan."

4 Q. Thank you. Do you recall when you made distributions
5 under the plan?

6 A. We made them at various times. We made them at
7 closing, as I recall, in order to pay the secured claims to
8 discharge the liens. Then we made them through the spring and
9 summer of --

10 Q. For the record, when you say "at closing," you mean
11 year end 1997?

12 A. Yes.

13 Q. When you refer to the spring and summer, when is
14 that?

15 A. 1998. So by the fall of 1998, the first round of
16 distributions were largely made. I say first round because
17 there were subsequent payments to the creditors' trust from
18 the, on account of the sale of property which were made I
19 believe in the first anniversary and second anniversary of the
20 closing or thereabouts, and as that money came into the trust,
21 subsequent distributions were made.

22 Q. As of September 17th, 1998 when Mr. Mourad filed his
23 motion to file administrative claim late, do you recall what if
24 any funds the estate held?

25 A. I looked that up recently and I have that number.

1 \$66,162.89 as of December -- September 30th, 1998, which was
2 about two weeks after Mr. Mourad filed his motion on September
3 17th, 1998.

4 Q. And do you recall what further distributions you made
5 after that date?

6 A. Well, there were, there was some money that was
7 reserved against that for claims that had not been allowed at
8 that point, as I recall it was about \$20,000; and then it
9 didn't make any further meaningful distributions until we
10 received the next payment from the purchase of the property,
11 sale of the property.

12 Q. Do you remember when that was?

13 A. I believe it was on the first anniversary of the sale
14 date.

15 Q. Let me direct your attention to Exhibit 7 in the
16 black binder and ask if you are able to identify that?

17 A. Yes, I am.

18 Q. Could you tell the Court what that is?

19 A. It's interim report on administration progress.

20 Q. And was that filed in the Bankruptcy Court on or
21 about October 15th, 1998 on your behalf?

22 A. Yes.

23 Q. Did you review it prior to its being filed?

24 A. I did.

25 Q. And was it accurate based upon your review?

1 A. It would have been from the books and -- from the
2 books and records of the creditors' trust, which were
3 administered by my office.

4 MR. MOORE: Your Honor, I would offer this as an
5 exhibit.

6 THE COURT: Any objection?

7 MR. MOURAD: I'm not sure, Your Honor, what --

8 THE COURT: Excuse me?

9 MR. MOURAD: I'm not positive what to respond to this
10 one. I'll just let it go, I guess.

11 THE COURT: It's admitted.

12 **WHEREUPON EXHIBIT T-3 WAS ADMITTED INTO EVIDENCE**

13 BY MR. MOORE:

14 Q. Mr. Gray, I'd ask you to review this document and
15 tell me if that refreshes your recollection as to whether all
16 administrative claims had been paid as of that date?

17 A. It does specifically state,

18 "The Trustee has paid all administrative expenses
19 including authorized, Court authorized professional
20 compensation and cost as evidenced by attached
21 Exhibit A."

22 -- which is a list of the various allowed administrative claims
23 in the case.

24 Q. And as to the further distributions to be made, out
25 of any further proceeds you received after that date, are there

1 statements thereafter with respect to the second cash credit
2 syndication payment and the -- are they correct?

3 A. (Pause, no response)

4 Q. Let me rephrase that.

5 A. Yes.

6 Q. Is that consistent with your understanding that the
7 further tax credit payments were designated to be paid those
8 expenses and not other expenses such as administrative
9 expenses?

10 A. Right, yes. As I recall, the plan was structured in
11 a way that as the second and then third --

12 THE COURT: Try to keep your voice up, please, Mr.
13 Gray.

14 BY MR. MOORE:

15 A. Yes. The plan was structured in a way as the, in the
16 second tax credit syndication payment was made, those funds
17 were specifically designated for the payment of certain claims,
18 claims of Winter Hill Savings Bank, the allowed priority tax
19 claims, and general unsecured claims.

20 Q. Mr. Gray --

21 MR. MOORE: Your Honor, was that moved into evidence?

22 THE COURT: 7? Yes, 7 has been admitted.

23 MR. MOORE: Thank you.

24 BY MR. MOORE:

25 Q. Mr. Gray, I would ask you to refer to the document

1 #10 in this binder and ask you if you're able to identify that?

2 A. I am.

3 Q. And what is that document?

4 A. It is amended motion for entry of final decree in
5 closing bankruptcy case.

6 Q. And that was filed on your behalf?

7 A. It was.

8 MR. MOORE: Your Honor, I would ask to admit that.

9 THE COURT: Objection?

10 MR. MOURAD: No, Your Honor.

11 THE COURT: Admitted.

12 **WHEREUPON EXHIBIT T-10 WAS ADMITTED INTO EVIDENCE**

13 MR. OWENS: Your Honor?

14 THE COURT: Yes, sir. Who are you, sir?

15 MR. OWENS: I'm Bill Owens.

16 THE COURT: Yes.

17 MR. OWENS: And I only rise because my name was
18 invoked in testimony of Mr. Gray.

19 THE COURT: About an hour ago. What's your point
20 right now?

21 MR. OWENS: The point is that I'd like to make -- and
22 I waited because I knew Mr. Moore would be cross-examining the
23 witness. My point is that Mr. Mourad is ill, and is not able
24 to move forward --

25 THE COURT: Well, if Mr. Mourad had something I would

1 have addressed that.

2 MR. OWENS: Okay, that's number one, but the other
3 point to which I rise had to do with an area of specificity
4 around the issue of the tax credit.

5 THE COURT: You don't get to testify --

6 MR. OWENS: I understand.

7 THE COURT: -- unless you're called as a witness.

8 Thank you for bringing it to my attention that Mr. Mourad is
9 ill.

10 MR. MOURAD: Could I call him, Your Honor, as a
11 witness?

12 THE COURT: Well, first, thank you for bringing that
13 to my attention. I'm not going to give you advisory opinion.
14 Sit down, Mr. Owens.

15 MR. OWENS: Okay.

16 THE COURT: Mr. Mourad, if you're not feeling well
17 and you're unable to continue today, tell me now, because we're
18 going to go until four o'clock otherwise. If you don't feel up
19 to it, then tell me now, and we'll suspend and we'll pick this
20 up on another day.

21 MR. MOURAD: Yes, I think it would be in the best
22 interest that I would stop now because right now ---

23 THE COURT: I'm not asking what's in your best
24 interest.

25 MR. MOURAD: Yes.

1 THE COURT: If you're not physically able to
2 continue, I will suspend. If you don't like the way it's going
3 and you want some time to rethink, that's different. You don't
4 get that option, but if you're telling me you're ill and you're
5 representing to me that you're ill, I will suspend this hearing
6 now and we'll pick it up on another day.

7 MR. MOURAD: Could we have fifteen minutes or ten
8 minutes?

9 THE COURT: I have to be out of this building at four
10 o'clock.

11 MR. MOURAD: Okay, Your Honor, then I rather postpone
12 it.

13 THE COURT: All right. Let me take a minute, go get
14 my calendar; and we will, because I suspect we weren't going to
15 finish anyway. Let me go get my calendar.

16 Mr. Gray, you can step down.

17 And we'll pick another day. Everybody get their
18 calendars together and let me just get this cleaned up
19 before --

20 (Off the record at 3:09 p.m., at Tape #3. Index #5060)

21 * * * *

22 (On the record at 3:11 p.m., at Tape #3. Index #5170)

23 THE COURT: Be seated, please. All right, let me
24 just speculate a bit on what we have left. You have Mr.
25 Gray's, finish Mr. Gray's cross-examination. How much longer do

1 you think that will take? I'm not holding you to this, I'm
2 just trying to -- I'd like to finish on the next time we come
3 back here so I want to make sure that I allow sufficient time.

4 MR. MOORE: Your Honor, I would think no more than a
5 half an hour.

6 THE COURT: All right, half hour for cross, and then
7 you're going to have some additional questions for Mr. Gray.

8 MR. MOURAD: Yes.

9 THE COURT: So if I assume another hour, do you think
10 that will be sufficient for your additional questions?

11 MR. MOURAD: I would say.

12 THE COURT: All right, so an hour and a half for Mr.
13 Gray on redirect. Okay. Then I did tell you earlier, even
14 though you only gave me four witnesses, that I would permit you
15 to testify. So I presume you're going to take that option.

16 MR. MOURAD: Yes.

17 THE COURT: And you're going to testify. How much
18 time do you think you need for your direct testimony?

19 MR. MOURAD: About a hour.

20 THE COURT: And then there'll be some cross, but you
21 don't know how long because you don't know what he's going to
22 say.

23 MR. MOORE: No, but I'm guessing like 40 minutes,
24 Your Honor.

25 THE COURT: All right, so I'm just going to say two

1 hours for Mourad direct and cross.

2 MR. MOURAD: Your Honor, am I allowed to put Bill
3 Owens on the stand as a witness?

4 THE COURT: Was he on your original witness list?

5 MR. MOURAD: No.

6 THE COURT: No. All right, and then you'll have your
7 case to put on. I gather you've decided to not defer on Mr.
8 Gray the way you've deferred on Mr. Jalbert.

9 MR. MOORE: I believe that's the case, yes, Your
10 Honor.

11 THE COURT: Okay. So we're looking at least a half
12 a day.

13 Out of -- unfortunately, the next several weeks are
14 very full. I am however in Boston again, although I can do it
15 in Worcester but it doesn't matter, I don't have a open half to
16 a full day until the 20th of October. Let me just double-check.

17 October 20th, we can start first thing in the
18 morning, and we can, we'll have to take, I have a meeting in
19 the middle of the day so if we don't finish in the morning,
20 I'll have to take an hour and a half or so for a meeting in the
21 middle of the day, that can be our lunch break, and we'll
22 finish if we don't finish in the morning.

23 MR. MOORE: Your Honor, Mr. Gray tells me that will
24 be somewhat difficult for him.

25 MR. GRAY: Your Honor, I'm in Chicago four days a

1 week and if there's any way of doing it on a Monday or Friday,
2 it would not require me to fly back and forth in the middle of
3 the week.

4 THE COURT: Well --

5 MR. GRAY: If that's possible. If not, I'll do it.

6 THE COURT: It's not possible in October. Let me see
7 whether it's possible in November.

8 MR. MOURAD: May I make a suggestion, Your Honor? If
9 we continue today for a hour, could we finish it?

10 THE COURT: No, I cannot. I have something that I --
11 I am leaving this building come hell or high water at four
12 o'clock. If I don't, then I've got no place to go home to
13 because my wife will have changed the locks by the time I get
14 there. Could I be any clearer than that?

15 I can do it, you want, need a Monday or a Friday. I
16 can do it -- some people aren't going to like this, the Friday
17 -- are we open the day after Veterans' Day? I can do it on the
18 12th of November which is a Friday. Now you're going to tell
19 me you're not available that day, Mr. Gray?

20 MR. GRAY: I think that's one of the few days --

21 THE COURT: Fine. It's very simple. You're the one
22 who chose to be in Chicago four days a week. That's your
23 problem. October 20th --

24 MR. GRAY: I will do it --

25 THE COURT: October 20th, readjust, be flexible.

1 October 20th, nine a.m., at nine a.m. It will either be in
2 this courtroom or across the hall in the courtroom next to
3 Judge Feeney's. I'm just not sure which courtroom will be
4 available. It will be on this floor, in one of these two
5 courtrooms.

6 The only witnesses that I will hear will be the
7 completion of Mr. Gray's testimony, Mr. Mourad's testimony if
8 he chooses to testify, and Mr. Jalbert -- well, Mr. Moore's
9 case, and he only had two witnesses on his list, Mr. Gray and
10 Mr. Jalbert. Other than that, that will be it, and although I
11 won't hold you to the exact minutes of your estimates, I will,
12 you can be sure, continuously remind you if you're running way
13 ahead, or way behind on your time estimates.

14 All right, is there anything else we can accomplish
15 today?

16 MR. OWENS: Your Honor --

17 THE COURT: Mr. Owens, I don't know what you, why you
18 think you even have standing to complain.

19 MR. OWENS: I realize that but I want to ask the
20 Court if I might be able to make a statement pursuant to the
21 issue that was raised, that mentioned my name.

22 THE COURT: No. You have no privilege here. You
23 have no right to make a statement. If you were on Mr. Mourad's
24 witness list, which you are not, then he could ask me to permit
25 you to testify. This witness list was put together years ago

1 and Mr. Mourad well understood what the rules of the engage
2 were. This is Mr. Mourad and the Trustee's case, and you have
3 no ability to request to testify, and the request is denied.

4 MR. OWENS: Thank you.

5 THE COURT: Anything further? Hope you feel better,
6 Mr. Mourad.

7 MR. MOURAD: Thank you.

8 THE COURT: We'll see you in a couple of weeks.

9 MR. MOORE: Thank you, Your Honor.

10 (End at Tape #3, Index #5836. 3:18 p.m.)

11 * * * * *

12 I certify that the foregoing is a true and accurate
13 transcript from the electronically sound recorded record of the
14 proceedings.

SHIRLEY GAYLE (pp. 3 to 115)

Date

SANDRA CARBONARO (pp 116 - 168)

For

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