

## **How I Fought A Property Tax Foreclosure**

by Marc Harry: Fishman

This document is intended to convey the process that I went through in fighting a foreclosure brought by the county for back property taxes. The case was carried to judgment for the county by an attorney re-presenting my wife and I. The judgment was paid using the Accepted For Value method along with a US Treasury money order payment. The information contained within these documents is freely given to anyone whom it may help provided that my personal information is not used without my express written consent.

Following is the sequence of events that took place and my supporting documentation:

February 2007, the county treasurer filed suit against my wife and I for back property taxes. I hired an attorney as I was ignorant of the system of commerce and available remedy. I learned of the current status of courts, commerce, "money", etc. while researching avenues to deal with this. As part of my strategy, I kept the attorney on the case to buy me time while I received my baptism by fire, for I knew what the outcome would be if I only relied on the attorney. The attorney carried case through to judgment against us this past April, 2008. The PRAECIPE TO ISSUE ORDER OF SALE was sent to the county sheriff from the court on June 6<sup>th</sup> and the sale was scheduled to happen on September 5, 2008.

I received a copy of the judgment from the attorney about one month after the judgment was issued. It's interesting to note here that at no time did the court provide me with an original judgment (true bill) for this matter. I believe that this is so that the judgment will cure and we can not invoke the Truth In Lending laws, particularly title Z, and refuse the order or respond with a novation.

I went down to the courthouse and got a certified copy of the judgment from the clerk of court's record office and began preparing my response.

One week prior to the scheduled auction (8/25/08) I filed an AFFIDAVIT OF ORIGINAL ISSUE, NOTICE TO THE COURT OF DEFENDANTS ACCEPTANCE OF THE CLAIM AND NOTICE OF THE COURTS ABANDONMENT OF CLAIM into my case. The notice included the following exhibits:

a certified copy of the judgment that was endorsed as accepted as value and included a money order attached to the back of the final judgment order signature page

a 1099-oid naming the court as the payer

a 1099-a naming my strawman as the lender

a 1040-v

a form 56 noting the judge as fiduciary on this case

payment instruction letter for redeeming the money order

The following pages contain the endorsed copy of the judgment and the full affidavit as filed. I'm not going to include the 1099 or 1040-V documents in this historical account.

Note, the endorsement on the judgment was written in red and the autograph and date are in blue. I

placed an endorsement on every page as I wasn't sure which page would be the proper page to endorse (a better safe than sorry approach).

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

EDWARD LEONARD  
Treasurer, Franklin County, Ohio

Plaintiff,

- v -

Marc Fishman, et al.,

Defendant(s).

TERMINATION NO.	18
BY:	<i>[Signature]</i>

**FINAL APPEALABLE ORDER**  
Case No. 07CVC-02-24  
Judge Lynch

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
3:03 APR 14 PM '08  
CLERK OF COURTS

**FINDING OF THE COURT AND ORDER OF SALE**

This matter is before the Court for hearing on the motion of the Plaintiff, Treasurer of Franklin County, Ohio Defendant(s) Marc Fishman and Stephanie Fishman have filed Answer. Defendant(s) Household Realty Corporation has filed an Answer and a CrossClaim. All other defendants have been served and have failed to Answer or otherwise defend this action Based upon the evidence, the Court finds that the said defendants named herein have been duly served according to law in this case and that the said defendants herein named have been regularly brought before the Court and the Court grants a finding for the plaintiff as prayed for in his complaint

The Court finds that there is due the plaintiff the sum of \$26,558.18, which includes court costs, administrative costs, tax certificates, accrued taxes, assessments, penalties, and charges. In addition thereto, any taxes, assessment, penalties, charges and interest not included in this Finding shall be paid pursuant to ORC 323 47. The Court finds that said sums are the first and best lien against their premises described in the complaint and that the plaintiff is entitled to recover the same from the sale of the premises.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that unless the said defendant shall within five (5) days from the date hereof pay or cause to be paid to the plaintiff the sum of \$26,558.18 which includes court costs, administrative costs, tax certificates, accrued taxes, assessments, penalties, and charges, that an order of sale shall be issued to the Sheriff of this court directing him to advertise and sell without appraisal and sell without appraisal according to law, as upon execution, the following described premises:

ACCEPTED AS VALUE

BY: Your Signature Here 8/25/08 (3)

EXEMPTION ID # SSN NO DASHES  
PAY TO THE US TREASURY \$26,558.18  
AND PAY THE SAME TO  
THE COURT OF COMMON PLEAS, FRANKLIN COUNTY  
AT 373 SOUTH HIGH STREET, COLUMBUS, OHIO 43215

*[Handwritten mark]*

D.7827 - C55

Situated in the County of Franklin, in the State of Ohio and in the City of Columbus and bounded and described as follows:

Attached as Exhibit A

Parcel No. 560-242251

LAST TRANSFER OF RECORD: Instrument No. 200112040281042

for not less than the finding of the Court set forth in paragraph two, above, including all taxes and assessments, penalties and charges payable subsequent to the delivery to the prosecuting attorney of the delinquent land tax certificate and prior to the entry of the confirmation of sale, and thereafter to report his proceedings to this Court for further orders, and all other questions are reserved for the further consideration and approval of the Court.

IT IS FURTHER ORDERED that notice of sale be published in The Daily Reporter, a newspaper of general circulation in Franklin County, Ohio, according to law.

*W.K. Lynch*  
JUDGE Lynch by Judge Cain 4/8/08

APPROVED

RON O'BRIEN  
Prosecuting Attorney

*[Signature]*

Adria L. Fields (#0064399)  
Assistant Prosecuting Attorney  
373 S. High St., 17<sup>th</sup> Floor  
Columbus, OH 43215  
(614) 462-3500  
alfields@FranklinCountyOhio.gov

*Submitted*  
Robert E. Cescner, Jr. Attorney for  
Marc Fishman and Stephanie Fishman - Owner

*Submitted*  
Kim M. Hammond Attorney for  
Household Realty Corporation

Atw

THE STATE OF OHIO Franklin County, ss	I, JOHN O'GRADY, Clerk OF THE COURT OF COMMON PLEAS, WITHIN AND FOR SAID COUNTY.
HEREBY CERTIFY THAT THE ABOVE AND FORE- GOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL <i>finding of Court - District</i> NOW ON FILE IN MY OFFICE. <i>Doll</i>	
WITNESS MY HAND AND SEAL OF SAID COUNTY THIS <i>20th</i> DAY OF <i>Aug</i> , A.D. 20 <i>08</i>	
JOHN O'GRADY, Clerk	
By <i>[Signature]</i> Deputy	

ACCEPTED AS VALUE  
BY: **Your Signature Here** 8/25/08  
EXEMPTION ID # **SSN\_NO\_DASHES**  
PAY TO THE US TREASURY \$26,558.18  
AND PAY THE SAME TO  
THE COURT OF COMMON PLEAS, FRANKLIN COUNTY  
AT 373 SOUTH HIGH STREET, COLUMBUS, OH 43215

United States Treasury Trust Account

# MONEY ORDER

Tracking No.: 08-08251129-MO

25 August 2008; DATE

Pay to the

Order of: COURTOF COMMON PLEAS, FRANKLIN COUNTY OHIO for \$26,558.18

Twenty Six Thousand Five Hundred Fifty Eight and 18/100 DOLLARS

Account No. **SSN NO. DASHES**

MARC H FISIMAN  
2339 HOBART DR.  
HILLIARD, OH 43026

Autograph By:

*Your Signature Here*

Authorized Representative

To: IRS Technical Support Division  
C/O The Treasury UCC Contract Trust Department of the IRS  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

**Original**

Memo: for full payment of case no. 07CV-E-02-2414

PAID FROM THE  
RESERVE FUND  
OF THE U.S. TREASURY  
FOR THE  
FEDERAL GOVERNMENT

D7827 - C56

the following REAL PROPERTY:

Situated in the State of Ohio, County of Franklin, and in the City of Columbus:

Being Lot Number Three Hundred Fifty-three (353), in HILLIARD GREEN SECTION 5, as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 55, page 27, Recorder's Office, Franklin County, Ohio.

ACCEPTED AS VALUE

By: **Your Signature Here** 8/25/08

EXEMPTION ID # **SSN\_NO\_DASHES**

PAY TO THE US TREASURY \$26,558.18

AND PAY THE SAME TO

THE COURT OF COMMON PLEAS, FRANKLIN COUNTY  
AT 373 SOUTH HIGH STREET, COLUMBUS, OH 43215



1  
2 **IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY OHIO**  
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4

5 EDWARD LEONARD, Treasurer )

6 Franklin County, Ohio, )

7 )  
8 Plaintiff, )

Case No. 07CVE-02-2414

9 )  
10 -v- )

11 MARC FISHMAN, et, al., )

12 ) AFFIDAVIT OF ORIGINAL ISSUE,  
13 ) NOTICE TO THE COURT OF  
14 ) DEFENDANTS ACCEPTANCE OF THE  
15 ) CLAIM AND NOTICE OF THE  
16 ) COURTS ABANDONMENT  
17 ) OF CLAIM  
18 Defendant(s) . )  
19 )  
20

21

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22 **SWORN AFFIDAVIT OF FACT**

23 I, Marc H. Fishman, being over the age of twenty-one years,  
24 competent with first hand knowledge, the undersigned Affiant,  
25 hereinafter "Affiant," do hereby solemnly swear, declare, and  
26 state as follows:  
27  
28

## Statement of Facts

- 1  
2  
3 1. Affiant is competent to state the matters set forth  
4 herewith;
- 5  
6 2. Affiant has personal first hand knowledge of the facts  
7 stated herein;
- 8  
9 3. All the facts stated herein are true, correct, and complete  
10 in accordance with Affiant's best firsthand knowledge and  
11 understanding, and if called upon to testify as a witness  
12 Affiant shall so state;
- 13  
14 4. Affiant is the only authorized agent for MARC HARRY FISHMAN;
- 15  
16 5. Affiant is not a trained or licensed Attorney. Of  
17 necessity, Affiant is acting at all times within Affiant's  
18 fundamental right to defend Affiant's life, liberty,  
19 property, safety, happiness, and privacy as set out in THE  
20 OHIO CONSTITUTION as well as executing the duties and  
21 responsibilities placed upon anyone acting as the trustee  
22 or agent of another;
- 23  
24 6. No one else has Affiant's authority, permission, consent,  
25 or approval to appear for, through, or on behalf of  
26 Affiant. In the event that any party presumes to speak for  
27 or represent Affiant or make any legal determination on  
28 Affiant's behalf or against Affiant, that party is hereby  
fired.
7. MARC HARRY FISHMAN is the "Original issuer" of the credit  
on the debt instrument commonly known and identified as



1 claim or case number 07CVE-02-2414 in THE COURT OF COMMON  
2 PLEAS, FRANKLIN COUNTY OHIO;

3 8. The afore referenced debt instrument is invested or  
4 registered as a mutual fund security in Fidelity Select  
5 Computer Pt fund number 7, trading symbol FDCPX, and is  
6 assigned CUSIP number 316390871;

7  
8 9. Affiant has established an unlimited value bond with the  
9 U.S. Treasury for the purpose of settling commercial claims  
10 including tax liabilities as in the instant case;

11 10. Affiant has verified that his unlimited value bond recorded  
12 with the U.S. Treasury is active and is registered as a  
13 mutual fund security in FIDELITY SELECT RETAILING PT fund  
14 number 46, trading symbol FSRPX, and is assigned CUSIP  
15 number 316390731;

16  
17 11. THE COURT OF COMMON PLEAS, FRANKLIN COUNTY OHIO is a  
18 corporation doing business under the Dun and Bradstreet D-  
19 U-N-S identification number 361735699 and is located at 373  
20 South High Street, Columbus, OH. 43215;

21 12. THE COURT OF COMMON PLEAS, FRANKLIN COUNTY OHIO, is listed  
22 with Dunn and Bradstreet, D/B/A for the corporation known  
23 as Judiciary/Supreme Courts of The State of Ohio located at  
24 373 South High Street, Columbus, OH. 43215;

25  
26 13. Plaintiff, EDWARD LEONARD, Treasurer, Franklin County a/k/a  
27 EDWARD J. LEONARD FRANKLIN COUNTY TREASURER is engaged in  
28 perpetrating a fraud upon this honorable court and upon  
Defendant(s) in seeking to again collect the property taxes

1 involved in the instant case, the credit for which is  
2 issued by the U.S. Treasury against Defendant(s) treasury  
3 account(s) upon claim by Plaintiff;

4 14. So as to ensure that no controversy exists, the original  
5 issue price of \$26,558.18 for claim or case number  
6 07CVE-02-2414 is accepted as value and returned for  
7 settlement and closure of the accounting (attached hereto  
8 as if stated herein Defendant's Exhibit "A");

9  
10 15. The Original issue price of \$26,558.18 for claim or case  
11 number 07CVE-02-2414 was accepted on April 8, 2008 by THE  
12 COURT OF COMMON PLEAS, FRANKLIN COUNTY OHIO and is filed on  
13 Internal Revenue Service forms 1099-OID, 1099-A and 1040-V  
14 (attached hereto as if stated herein Defendant's "Exhibit  
15 B, C and D");

16 16. Creditor MARC HARRY FISHMAN accepts the claim or case  
17 number 07CVE-02-2414 "Exhibit A" for the assessed value of  
18 the taxes owed;

19  
20 17. IRS form 56 Notice Concerning Fiduciary Relationship is the  
21 correct form to authorize a third party to complete,  
22 execute, file, and receive necessary IRS information  
23 returns connected with monetary transactions;

24 18. To avoid any delay in settling and closing the instant  
25 case, Affiant has included with this filing a copy of the  
26 completed IRS form 56 document as dispatched to the IRS  
27 (attached hereto as if stated herein Defendant's Exhibit  
28 "E") naming the signatory to the debt instrument, Julie  
Lynch d/b/a Judge Julie Lynch as an authorized fiduciary

1 and the responsible party in this case or claim;

2 19. There being no controversy in THE COURT OF COMMON PLEAS,  
3 FRANKLIN COUNTY OHIO on claim or case number 07CVE-02-2414  
4 this court does not have subject matter jurisdiction and  
5 must vacate any order(s) or judgment(s) made;

6  
7 20. Failure to vacate any order(s) or judgment(s) made in this  
8 case, payment having been lawfully and fully tendered,  
9 shall constitute a fraud upon the defendant(s) and, if the  
10 result of such fraud is the loss of the Defendant(s)  
11 property, shall constitute an illegal taking under color of  
12 law, an act of treason and sedition against the United  
13 States, and a loss of personal immunity by any and all  
14 perpetrators involved in said act;

15 21. THE COURT OF COMMON PLEAS, FRANKLIN COUNTY OHIO has  
16 abandoned the claim(s) (attached hereto as if stated herein  
17 Defendant's "Exhibit C") associated with the claim or case  
18 number 07CVE-02-2414;

19 22. To ensure the proper processing and receipt of the award in  
20 this case or claim, Affiant has included a PAYMENT NOTICE  
21 and LETTER OF INSTRUCTION (attached hereto as if stated  
22 herein Defendant's "Exhibit F") for the included IRS forms;

23  
24 23. THE COURT OF COMMON PLEAS, FRANKLIN COUNTY OHIO is in  
25 receipt of the properly endorsed bill (attached hereto as  
26 Defendant's Exhibit "A"), copies of IRS Forms 1099-OID,  
27 1099-A, and form 56 as filed with the IRS (attached hereto  
28 as if stated herein Defendants "Exhibits B, C, and E"),  
payment authorization via IRS form 1040-V (attached hereto

1 as if stated herein Defendant's Exhibit "D"), and PAYMENT  
2 NOTICE and LETTER OF INSTRUCTION (attached hereto as if  
3 stated herein Defendants "Exhibits F") for the settlement  
4 and closure of the tax in this claim or case number  
5 07CVE-02-2414;

6 24. Payment of the sum due and owing in this case is made in  
7 full in accordance with public law 73-10 and the Ohio  
8 Revised Code by and through the exhibits included with this  
9 filing. Failure or refusal to accept and process the  
10 included payment shall constitute payment in full under the  
11 Ohio revised code Title 13 chapter 1303:

12 **1303.68 Tender of payment - UCC 3-603**

13 (A) If tender of payment of an obligation to pay an  
14 instrument is made to a person entitled to enforce the  
15 instrument, the effect of tender is governed by  
16 principles of law applicable to tender of payment  
17 under a simple contract.

18 (B) If tender of payment of an obligation to pay an  
19 instrument is made to a person entitled to enforce the  
20 instrument and the tender is refused, there is  
21 discharge, to the extent of the amount of the tender,  
22 of the obligation of an indorser or accommodation  
23 party having a right of recourse with respect to the  
24 obligation to which the tender relates.

25 (C) If tender of payment of an amount due on an  
26 instrument is made to a person entitled to enforce the  
27 instrument, the obligation of the obligor to pay  
28 interest after the due date on the amount tendered is

1 discharged. If presentment is required with respect to  
2 an instrument and the obligor is able and ready to pay  
3 on the due date at every place of payment stated in  
4 the instrument, the obligor is deemed to have made  
5 tender of payment on the due date to the person  
6 entitled to enforce the instrument.

7 Effective Date: 08-19-1994

8  
9 25.Failure to rebut, with specificity, the afore stated facts  
10 within three business days shall constitute agreement and  
11 acceptance of the included payment and shall settle and  
12 close this case by equitable estoppel. Silence is  
13 acquiescence. See: Connally v. General Construction Co.,  
14 269 U.S. 385, 391. Notification of legal responsibility is  
15 "the first essential of due process of law." Also, see:  
16 U.S. v. Tweel, 550 F. 2d. 297. "Silence can only be  
17 equated with fraud where there is a legal or moral duty to  
18 speak or where an inquiry left unanswered would be  
19 intentionally misleading."

20 Further Affiant saith naught.

21 Verification: I Marc Harry Fishman am the authorized  
22 representative of the Defendant in the above captioned case. I  
23 have read the above captioned Affidavit of Original Issue, the  
24 statements, laws, statutes, and applicable codes and affirm on  
25 my commercial liability that they are true, correct, and not  
26 misleading to the best of my knowledge and belief.  
27  
28

1 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

2  
3  
4 By: \_\_\_\_\_

5 Marc Harry Fishman,  
6 Authorized Representative

7  
8 Using a notary on this document does not constitute any adhesion  
9 nor does it alter my Neutral standing in itinere in original  
10 Common Law Jurisdiction. The purpose for notary is verification  
11 and identification only and not for entrance into any foreign  
12 jurisdiction.

13  
14  
15  
16 JURAT

17 **STATE OF OHIO**

[Seal]

18 **COUNTY OF FRANKLIN**

19 SUBSCRIBED AND SWORN TO (or Affirmed) BEFORE ME ON THIS

20 \_\_\_\_\_ DAY OF \_\_\_\_\_, 200\_\_.

21  
22 BY \_\_\_\_\_ [Stamp]

23 personally known to me or proved to me on the basis of  
24 satisfactory evidence to be the person(s) who appeared before  
25 me. \_\_\_\_\_

26 NOTARY PUBLIC IN AND FOR AFORESAID STATE

## PAYMENT NOTICE and LETTER OF INSTRUCTION

NOTICE TO AGENT IS NOTICE TO PRINCIPAL  
NOTICE TO PRINCIPAL IS NOTICE TO AGENT

August 21, 2008

Marc H Fishman [A private Man]  
c/o 2339 Hobart Drive  
Hilliard, Ohio  
non domestic

Julie Lynch, d/b/a Judge Julie Lynch  
COURTROOM 7C  
369 SOUTH HIGH STREET  
7TH FLOOR  
COLUMBUS, OH 43215

Ref: Case # 07CVE-02-2414 Property Tax Delinquency

To Whom It May Concern:

Enclosed herein is payment in full to set off the above referenced case.

Additional Instructions:

- 1) Provide attached documents, as accepted for satisfaction of outstanding obligation to whatever party they may attach, to the appropriate agency, institution, or corporation.
- 2) Indemnify and hold harmless the parties MARC HARRY FISHMAN, a fiction, and Marc Harry Fishman, a sovereign man, and STEPHANIE LEE FISHMAN, a fiction, and Stephanie Lee Fishman, a sovereign woman, in whatsoever situations as may be present or may arise.
- 3) Provide a release of Warrants and or Notices with any and all agencies including the Franklin County Sheriff's Office and return notice to the above address.
- 4) Properly account for set off of the Property Tax Delinquency accounting in what ever matter is required.
- 5) Provide Notice of Satisfaction in the above referenced matters.
- 6) Return all notices of release, satisfaction and other such notices to the above noted

address.

Sincerely,

By: \_\_\_\_\_  
Authorized Representative, Marc H. Fishman

CC: HENRY M. PAULSON, Secretary of the Treasury  
INTERNAL REVENUE SERVICE, Cincinnati OH

Enclosures:

Payment  
1099-OID  
1040-V  
Form 56  
Court bill endorsed as accepted



Upon receiving this filing, my attorney filed a motion to be released from the case as my motion made it clear that no other represented me in this matter. The court approved the attorney's motion.

On September 2, three days prior to the scheduled auction, I filed a MOTION TO VACATE ORDER OF SALE into the case to see if I could get the sale stopped. The next pages have that motion.

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**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY OHIO**

EDWARD LEONARD, Treasurer )

Franklin County, Ohio, )

Plaintiff, )

Case No. 07CVE-02-2414

-v-

) MOTION TO VACATE ORDER OF

MARC FISHMAN, et, al., )

SALE

Defendant(s). )

---

**DEFENDANT'S MOTION TO VACATE ORDER OF SALE**

I, Marc H. Fishman, being over the age of twenty-one years,  
competent with first hand knowledge, the undersigned Affiant,  
hereinafter "Affiant," do hereby solemnly swear, declare, and  
state as follows:

**Statement of Facts**

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1. Affiant is competent to state the matters set forth herewith;
2. Affiant has personal first hand knowledge of the facts stated herein;
3. All the facts stated herein are true, correct, and complete in accordance with Affiant's best firsthand knowledge and understanding, and if called upon to testify as a witness Affiant shall so state;
4. Affiant is the only authorized agent for MARC HARRY FISHMAN;
5. Affiant is not a trained or licensed Attorney. Of necessity, Affiant is acting at all times within Affiant's fundamental right to defend Affiant's life, liberty, property, safety, happiness, and privacy as set out in THE OHIO CONSTITUTION as well as executing the duties and responsibilities placed upon anyone acting as the trustee or agent of another;
6. No one else has Affiant's authority, permission, consent, or approval to appear for, through, or on behalf of Affiant. In the event that any party presumes to speak for or represent Affiant or make any legal determination on Affiant's behalf or against Affiant, that party is hereby fired;
7. THE COURT OF COMMON PLEAS, FRANKLIN COUNTY OHIO issued a bill to Defendant(s) via judgment and the bill has been

1 accepted and settled in accord with the laws of the STATE  
2 OF OHIO and THE UNITED STATES by and through Affiant's  
3 filing of Affidavit of Original Issue, lodged with this  
4 honorable court on August 25, 2008;

5 8. THE COURT OF COMMON PLEAS, FRANKLIN COUNTY OHIO is in  
6 receipt of and has, through tacit acceptance, agreed that  
7 the judgment in the instant claim or case number  
8 07CVE-02-2414 is fully and lawfully satisfied;

9  
10 9. Julie Lynch d/b/a Judge Julie Lynch has been assigned as  
11 the authorized fiduciary for settlement and closure of  
12 claim or case number 07CVE-02-2414;

13 10. Affiant respectfully requests this honorable court to  
14 respond to this motion in a timely manner as the  
15 Defendant's property is scheduled for sale by auction  
16 through the county sheriff's office on September 5, 2008;

17  
18 11. There being no remaining controversy in THE COURT OF COMMON  
19 PLEAS, FRANKLIN COUNTY OHIO on claim or case number  
20 07CVE-02-2414 Affiant moves this court to vacate any and  
21 all orders, encumbrances, or liens issued in the instant  
22 case, including but not limited to, the order of sale  
23 issued to the county sheriff instructing the sheriff to  
24 sell at auction the Defendant's property and to declare  
25 this matter settled and closed.

26 Further Affiant saith naught.  
27  
28

1 Verification: I Marc Harry Fishman am the authorized  
2 representative of the Defendant in the above captioned case. I  
3 have read the above captioned MOTION TO VACATE ORDER OF SALE,  
4 the statements, laws, statutes, and applicable codes and affirm  
5 on my commercial liability that they are true, correct, and not  
6 misleading to the best of my knowledge and belief.

7  
8 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

9  
10 By: \_\_\_\_\_  
11 Marc Harry Fishman,  
12 Authorized Representative

13 Using a notary on this document does not constitute any adhesion  
14 nor does it alter my Neutral standing in itinere in original  
15 Common Law Jurisdiction. The purpose for notary is verification  
16 and identification only and not for entrance into any foreign  
17 jurisdiction.

18 **JURAT**

19 **STATE OF OHIO**

20 **COUNTY OF FRANKLIN**

21 SUBSCRIBED AND SWORN TO (or Affirmed) BEFORE ME ON THIS  
22 \_\_\_\_\_ DAY OF \_\_\_\_\_, 200\_\_.

23  
24 Marc H Fishman personally known to me or proved to me on the  
25 basis of satisfactory evidence to be the person(s) who appeared  
26 before me.

27 [Seal]

28 \_\_\_\_\_  
NOTARY PUBLIC IN AND FOR OHIO STATE

**CERTIFICATE OF SERVICE**

I, Marc H. Fishman, being over the age of twenty-one years, competent with first hand knowledge, do hereby solemnly swear, declare, and state as follows:

The foregoing MOTION TO VACATE ORDER OF SALE has been served on all parties to this action by sending to them, on this 2nd day of September, 2008, by United States Postal Service certified mail, one paper copy, in an envelope properly addressed and with tracking number as indicated as follows:

<u>Recipient</u>	<u>USPS Certified Mail ID Number</u>
Adria Fields Franklin County Prosecutor's Office 373 South High Street 14 <sup>th</sup> Floor Columbus, Ohio 43215	7008 0150 0002 3507 9463
Robert E. Cesner, Jr. 456 Haymore Avenue North Worthington, Ohio 43085-2445	7008 0150 0002 3507 9456
Stan C. Cwalinski c/o Keith D Weiner & Assoc Co 4 <sup>th</sup> Floor 75 Public Square Cleveland, Ohio 44113	7008 0150 0002 3507 9449

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Leonard A. Cuilli  
c/o Keith D Weiner & Assoc Co  
4<sup>th</sup> Floor  
75 Public Square  
Cleveland, Ohio 44113

7008 0150 0002 3507 9432

Kim Hammond  
c/o Keith D Weiner & Assoc Co  
4<sup>th</sup> Floor  
75 Public Square  
Cleveland, Ohio 44113

7008 0150 0002 3507 9425

Not having gotten any order issued by the court prior to the auction, I decided to dash off a notice to the sheriff, the prosecutor, and the judge. I knew that they wouldn't get the notice prior to the sale but they would have it prior to accepting payment by the winning bidder and I thought that this might be an important legal point later if the sale was permitted to stand and I would have to continue the fight.

Following is the notice that I sent:

Marc H Fishman  
c/o 2339 Hobart Drive  
Hilliard, Ohio  
September 4, 2008

Adria Fields  
Franklin County Prosecutor's Office  
373 South High Street  
14<sup>th</sup> Floor  
Columbus, Ohio 43215

Judge Julie Lynch  
Courtroom 7C  
369 South High Street  
7th Floor  
Columbus, Ohio 43215

Jim Karnes  
Franklin County Ohio Sheriff  
369 South High Street  
Columbus, Ohio 43215

Re: case 07CVE-02-2414

### **Notice**

In regards to the above captioned case, the court being in receipt of full and lawful settlement, I am hereby providing the above listed parties notice as to my intent should the sale of the concerned property be permitted to go forth and stand. As trustee for a named party in the aforementioned case, it is my duty to attempt to prevent injury to the trust.

This court and all concerned parties have been notified that this matter is settled in accord with the judgment of the court, the laws of the State of Ohio, and the laws of the United States.

"Knowledge of facts which would naturally lead an honest and prudent person to make inquiry constitutes 'notice' of everything which such inquiry pursued in good faith would disclose.  
Twitchell v. Nelson, 131 Minn. 375, 155 N.W. 621, 624; German-American Nat. Bank of Lincoln



v. Martin, 277 Ill. 629, 115 N.E. 721, 729." Black's Law Dictionary, 4th Ed., p. 1210.

Payment of the judgment has been made in accord with the laws of Ohio and the laws of the United States:

**Ohio Revised Code**

**1303.68 Tender of payment - UCC 3-603**

(A) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.

(B) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

(C) If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

Effective Date: 08-19-1994

United States Constitution, Article I, Section 10 [emphasis added]:

**No state shall** enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; **make anything but gold and silver coin a tender in payment of debts**; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

It is the duty of the court to protect the public and uphold the law. Failure to honor payment in this matter and to proceed in an illegal taking of property under color of law is a criminal offense:

**TITLE 18 > PART I > CHAPTER 13 > § 241**

§ 241. Conspiracy against rights

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

**TITLE 18 > PART I > CHAPTER 13 > § 242**

§ 242. Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

**TITLE 42 > CHAPTER 21 > SUBCHAPTER I > § 1986**

§ 1986. Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding \$5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

When the government elects to operate in its corporate capacity it has no more immunity than other corporations or persons:

"Federal tort law: judges cannot invoke judicial immunity for acts that violate litigants civil

rights; Robert Craig Waters. Tort & Insurance Law Journal, Spr. 1986 21 n3, p509-516"

A Judge is not immune for tortious acts committed in a purely Administrative, non-judicial capacity. *Forrester v. White*, 484 U.S. at 227-229, 108 S.Ct. at 544-545; *Stump v. Sparkman*, 435 U.S. at 380, 98 S.Ct. at 1106. *Mireles v. Waco*, 112 S.Ct.286 at 288 (1991).

Administrative-capacity torts by a judge do not involve the "performance of the function of resolving disputes between parties, or of authoritatively adjudicating private rights," and therefore do not have the judicial immunity of judicial acts. *See: Forrester v. White*, 484 U.S. 219, 98 L.Ed.2d 555, 108 S.Ct. 538 (1988); *Atkinson-Baker & Assoc. v. Kolts*, 7 F.3d 1452 at 1454, (9th Cir. 1993). A Judge as a State Actor is not vested with the sovereign immunity granted to the State itself . *See: Rolfe v. State of Arizona*, 578 F.Supp. 987 (D.C. Ariz. 1983); *Rutledge v. Arizona Bd. of Regents*, 660 F.2d 1345, (9th Cir, 1981) cert. granted *Kush v. Rutledge*, 458 U.S. 1120, 102 S.Ct. 3508,73 L.Ed.2d 1382, affirmed 460 U.S. 719, 103 S.Ct. 1483, 75 L.Ed.2d. 413, appeal afterremand 859 F.2d 732, *Ziegler v. Kirschner*, 781 P.2d 54, 162 Ariz. 77 (Ariz. App., 1989).

As the trustee and authorized representative for a named Defendant in this matter, I demand that the court, attorneys, and Sheriff uphold their duty to the public and to enforce and abide by the laws of the State of Ohio and the United States.

Failure to lawfully and properly discharge this case will require me to engage in filing a claim against the public official bonds for having received lawful negotiable instruments and engaging in criminal conduct. I will begin the records information retrieval process immediately with the state's attorney general's office, and I will file affidavits in support of criminal complaints.

Regards,

Marc H. Fishman  
Authorized Representative

On September 5, 2008 the sheriff sold the lot at auction but not the house. I found this interesting as most foreclosures at auction were for the sale of the house and lot but ours was the lot only. Maybe this is because it was a property tax foreclosure and not a mortgage foreclosure. Anyway, this is where it gets interesting.

On September 9<sup>th</sup> I sent a second payment of \$50,000 directly to the county treasurer using Patrick Devine's Property Tax Payment letter. I included a money order of the same format as that used with court affidavit but printed on 100% cotton bond paper. Following is that mailing:

**Property Tax Payment Letter**

USPS CERTIFIED MAIL TRACKING No. **7008 0150 0002 3507 9395**

September 11, 2008

From: Marc Harry Fishman  
2339 Hobart Drive  
Hilliard, Ohio [43026]

To: Edward J. Leonard, Franklin County Treasurer  
373 South High Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43215

**Subject:** Payment of Property Taxes, Common Pleas case # 07CVE-02-2414

On August 25, 2008 I paid the court judgment on the property tax delinquency in the above referenced case via Money Order, presented to the Clerk of Courts and filed into the record of the case. Apparently the payment has not reached your office as my home was auctioned and sold on September 5, 2008 despite having paid the judgment (a violation of law). Please contact Adria Fields in the Franklin County Prosecutor's Office or Judge Julie Lynch of the Common Pleas Court to arrange to receive the payment in their possession.

To ensure that the delinquent tax bill is addressed timely, please find the additional enclosed payment (Money Order # 08-09110902-MO in the amount of \$50,000.00) submitted to you along with a copy of the previously paid court judgment for same. Refusal to accept this payment will result in a violation of the several different laws listed in the rest of the letter and will be reportable to the IRS (using form 3949A) and US Treasury Departments.

Apply any overpayment, after all fees, costs, etc. are deducted, as a credit toward the future tax bill on the involved property.

The following instructions in this letter will insure the proper discharge (payment) against the United States Treasury Trust Account # SSN\_NO\_DASHES for same said account number to obtain the full payment of this bill which has been authorized by me as the agent and representative of the above listed United States Treasury Trust Account.

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**NOTE:** This Letter and the Original Money Order are to be presented together to the Bank for their proper understanding of their requirements.

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This payment is to be accepted at banking institutions under the policy of the Federal Reserve and constitutes lawful tender. This is payment, via the 1040V and Money Order, as a true and recognized Bill of Exchange to release the proceeds, amounts, fixtures and body according to the Uniform Commercial Code 7-104(b) and UCC 1-104, as they have been adopted in the States, and is in accordance with House Joint Resolution 192 of June 5th, 1933 now public law 73-10, with these rights confirmed, without abrogation, by congressional act.

Be advised that I have processed my documentation to establish my account with the United States Treasury Department, which account is referenced by the US Treasury Trust Account # SSN\_NO\_DASHES. This 1040V and Money Order is to be engaged through your Bank's Treasury Tax and Loan (TT&L) account which is exclusively administered and controlled by the **Technical Support Division of the IRS**. {This instrument is **NOT** a **Treasury Security** to be sent to the **Bureau of Public Debt**.} This instrument is to be sent to/received by:

---

---

**IRS Technical Support Division**  
**C/O The Treasury UCC Contract Trust Department of the IRS**  
**Department of the Treasury**  
**1500 Pennsylvania Avenue, NW**  
**Washington, D.C. 20220**

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NOTE: The Complete routing instructions must be included (Letter of Advice) in order for the 1040V and Money Order to be processed and honored.

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NOTE: If the bank requires a payment for the mailing and transfer cost, when presented with a proper bill I will pay the bank.

---

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Under Commercial Banking Codes, the Bank that processes the negotiable instrument through its TT&L Department is required to issue a credit to the account and place a hold on the credit for a designated number of days, then Release the Order on the credit in the designated account.

Details regarding the use of the IRS 1040V voucher and Money Order are published by Witkin - Negotiable Instruments even though referencing California Law in regards to the UCC, they have been, for 80+ years, used as a standard in the banking industry. This is covered under Ohio Revised Code 1303.03 Negotiable instrument - UCC 3-104. Federal Banking Regulations and court decisions (stare decisis) make it clear that the banks must accept and process these negotiable instruments.

The IRS has indicated that regulations now require each Bill/Order (along with the original 1040V voucher and copy of the Money Order and copy of the property tax statement) presented into the private sector **MUST** also be attached to a 1099-OID and a 1096. These items are being transmitted by me by certified mail to complete the required notification to the IRS of the account transfer transaction.

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**BE WARNED:** These property tax payments are being checked against my Master Treasury Account File for it has been noted double payments have been made in some accounts and if found would be reported on IRS Form 3949A.

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You have ten (10) days to process this IRS Bill of Exchange through the technical support division of the Internal Revenue Service. Otherwise, Form 3949A, regarding suspicious activity, will be forwarded to the Internal Revenue Service Criminal Investigation Division for settlement courtesy of the United States Treasury Department for government, and possible military enforcement. In the event of the attempt of procurement of this lawful action, pursuant to congressional act(s), standing representation will insure that the IRS is properly informed formally of any fraudulent intentions.

Sincerely,

MARC H FISHMAN

By: \_\_\_\_\_

Marc Harry Fishman , Authorized Representative

Cc: Adria Fields, Franklin County Prosecutor's Office  
Jim Karnes, Franklin County Sheriff

**Attachments:**

Copy of paid Court Judgment (case # 07CVE-02-2414)  
Original of the Money Order (# 08-09110902-MO)  
Copy of IRS 1040V  
Copy B of IRS 1099-OID

On September 11<sup>th</sup> I sent a notice to the county sheriff and the prosecutor that, in good faith, I had tendered a second payment on the tax bill to the county treasurer.

Following is that notice:

Marc Harry Fishman  
c/o 2339 Hobart Drive  
Hilliard, Ohio  
September 11, 2008

Adria Fields  
Franklin County Prosecutor's Office  
373 South High Street  
14<sup>th</sup> Floor  
Columbus, Ohio 43215

Jim Karnes  
Franklin County Ohio Sheriff  
369 South High Street  
Columbus, Ohio 43215

Re: 2<sup>nd</sup> Payment on case 07CVE-02-2414

## Notice

In regards to the above referenced case, I have enclosed a copy of the second payment of the delinquent tax bill on the parcel of land concerned in the above noted case. To date, the county has not acknowledged having received lawful payment for the judgment issued nor have I been notified that the sale of the property subsequent to satisfaction of the judgment has been invalidated. Judge Julie Lynch has been assigned fiduciary responsibility for settling this matter and is in violation of her oath to protect the public by not executing that responsibility and ensuring that the payment is forwarded to the County Treasurer.

As a final effort to settle this matter equitably and give our public servants an opportunity to perform the job functions that they voluntarily agreed to perform, I have issued a payment directly to the County Treasurer, a copy of which is included with this letter.

I am notifying you so that you can avoid becoming an unwitting actor in violation(s) of law.

Regards,

Marc H. Fishman

By: \_\_\_\_\_  
Authorized Representative

On September 17<sup>th</sup> I filed two writs into the case to see if I could get any kind of response at all. An ADMINISTRATIVE NOTICE AND DEMAND WRIT OF ERROR CORAM NOBIS DEMAND FOR DISMISSAL OR REVERSAL FOR LACK OF JURISDICTION and an ADMINISTRATIVE NOTICE CORAM NOBIS OF TERRORIST ACTS BY THE ACCUSERS.

This got a response! I received a motion, entered on September 23<sup>rd</sup>, from the judge informing me that she was filing an order to strike these two Coram Nobis filings from the record. In her commentary she noted that these filings sounded threatening.

I waited to see if there would be any action by the Sheriff or the court on the case but all remained quiet and no notice to vacate the premises issued from the court.

On October 6<sup>th</sup> I filed a NOTICE OF DEFAULT AND OPPORTUNITY TO CURE AND NOTICE OF BREACH OF FIDUCIARY DUTY into the case. Following is that notice:

1  
2 **IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY OHIO**  
3  
4

5 EDWARD LEONARD, Treasurer )  
6 Franklin County, Ohio, )  
7 )  
8 Plaintiff, ) Case No. 07CVE-02-2414  
9 )  
10 -v- )  
11 ) NOTICE OF DEFAULT AND,  
12 MARC FISHMAN, et, al., ) OPPORTUNITY TO CURE  
13 ) AND NOTICE OF BREACH  
14 ) OF FIDUCIARY DUTY  
15 )  
16 Defendant(s). )  
17 )

---

18  
19  
20 **SWORN AFFIDAVIT OF FACT**  
21

22  
23 I, Marc H. Fishman, being over the age of twenty-one years,  
24 competent with first hand knowledge, the undersigned Affiant,  
25 hereinafter "Affiant," do hereby solemnly swear, declare, and  
26 state as follows:  
27  
28



## Statement of Facts

- 1  
2  
3 1. Affiant is competent to state the matters set forth  
4 herewith;
- 5  
6 2. Affiant has personal first hand knowledge of the facts  
7 stated herein;
- 8  
9 3. All the facts stated herein are true, correct, and complete  
10 in accordance with Affiant's best firsthand knowledge and  
11 understanding, and if called upon to testify as a witness  
12 Affiant shall so state;
- 13  
14 4. Affiant is the only authorized agent for MARC HARRY FISHMAN;
- 15  
16 5. Affiant is not a trained or licensed Attorney. Of  
17 necessity, Affiant is acting at all times within Affiant's  
18 fundamental right to defend Affiant's life, liberty,  
19 property, safety, happiness, and privacy as set out in THE  
20 OHIO CONSTITUTION as well as executing the duties and  
21 responsibilities placed upon anyone acting as the trustee  
22 or agent of another;
- 23  
24 6. No one else has Affiant's authority, permission, consent,  
25 or approval to appear for, through, or on behalf of  
26 Affiant. In the event that any party presumes to speak for  
27 or represent Affiant or make any legal determination on  
28 Affiant's behalf or against Affiant, that party is hereby  
fired.
7. MARC HARRY FISHMAN is the "Original issuer" of the credit  
on the debt instrument commonly known and identified as

1 claim or case number 07CVE-02-2414 in THE COURT OF COMMON  
2 PLEAS, FRANKLIN COUNTY OHIO;

3 8. Affiant, on behalf of Defendants, did deposit with the  
4 Clerk of Court's office, on August 25, 2008, full and  
5 lawful payment of the judgment associated with the instant  
6 case;

7  
8 9. The aforementioned payment was in accord with the Ohio  
9 revised code (ORC) Title 13 chapter 1303 regarding  
10 negotiable instruments and United States public law 73-10;

11 10. Affiant has complied with the indorsement demand by the  
12 court in accord with ORC 1303.25-26;

13  
14 11. THE COURT OF COMMON PLEAS, FRANKLIN COUNTY OHIO, Judge  
15 Julie Lynch, Adria Fields, John O'Grady, Edward J. Leonard,  
16 or any of their officers, agents or assigns are in breach  
17 of fiduciary duty and notice is hereby tendered in accord  
18 with ORC 1303.37 to wit [emphasis added]:

19 **1303.37 Notice of breach of fiduciary duty - UCC 3-307**

20 (A) As used in this section:

21  
22 (1) "Fiduciary" means an agent, trustee, partner,  
23 corporate officer, corporate director, or other  
24 representative owing a fiduciary duty with respect to  
25 an instrument.

26  
27 (2) "Represented person" means the principal,  
28 beneficiary, partnership, corporation, or other person  
to whom the fiduciary duty with respect to an

1 instrument referred to in division (A) (1) of this  
2 section is owed.

3 (B) If **an instrument is taken from a fiduciary** for  
4 payment or collection **or for value**, the taker has  
5 knowledge of the fiduciary status of the fiduciary,  
6 and the **represented person makes a claim to the**  
7 **instrument or its proceeds on** the basis that the  
8 transaction of the fiduciary is a **breach of fiduciary**  
9 **duty**, all of the following rules apply:

10 (1) **Notice of breach of fiduciary duty by the**  
11 **fiduciary is notice of the claim** of the represented  
12 person.

13  
14 (2) In the case of an instrument payable to the  
15 represented person or to the fiduciary as fiduciary of  
16 the represented person, **the taker has notice of the**  
17 **breach** of fiduciary duty if any of the following  
18 apply:

19 (a) The instrument is taken in payment of or as  
20 security for a debt known by the taker to be the  
21 personal debt of the fiduciary.

22  
23 (b) **The instrument is taken in a transaction known by**  
24 **the taker to be for the personal benefit of the**  
25 **fiduciary.**

26  
27 (c) The instrument is deposited to an account other  
28 than an account of the fiduciary as fiduciary of the  
represented person or an account of the represented

1 person.

2 (3) If an instrument is issued by the represented  
3 person or by the fiduciary as fiduciary of the  
4 represented person and is made payable to the  
5 fiduciary personally, the taker does not have notice  
6 of the breach of fiduciary duty unless the taker knows  
7 of the breach of fiduciary duty.

8  
9 (4) If **an instrument is issued by the represented**  
10 **person** or by the fiduciary of the represented person  
11 **to the taker as payee**, the taker has notice of the  
12 breach of fiduciary duty if any of the following  
13 apply:

14 (a) The **instrument is taken in payment of** or as  
15 security for a **debt known by the taker to be the**  
16 **personal debt of the fiduciary.**

17  
18 (b) The instrument is **taken in a transaction known by**  
19 **the taker to be for the personal benefit of the**  
20 **fiduciary.**

21 (c) The instrument is deposited to an account other  
22 than an account of the fiduciary as fiduciary for the  
23 represented person or an account of the represented  
24 person.

25 Effective Date: 08-19-19;

26  
27 12.THE COURT OF COMMON PLEAS, FRANKLIN COUNTY OHIO, its  
28 agents, officers, and assigns have reacquired the

1 instrument [judgment], fully indorsed, in accord with ORC  
2 1303.27, to wit [emphasis added]:

3 **1303.27 Reacquisition - UCC 3-207**

4 "Reacquisition of an instrument" occurs if it is  
5 transferred by negotiation or otherwise to a former  
6 holder. A former holder who reacquires the instrument  
7 may cancel any indorsements made after the reacquirer  
8 first became a holder of the instrument. **If the  
9 cancellation causes the instrument to be payable to  
10 the reacquirer or to bearer, the reacquirer may  
11 negotiate the instrument. An indorser whose  
12 indorsement is canceled is discharged, and the  
13 discharge is effective against any subsequent holder.;**

14 13.THE COURT OF COMMON PLEAS, FRANKLIN COUNTY OHIO has not  
15 provided Defendants with notice or evidence that the  
16 payment received in the instant case has been dishonored  
17 and must, as a matter of law in accord with ORC 1303.39  
18 consider the obligation satisfied from the date of receipt  
19 [August 25, 2008], to wit [emphasis added]

20 **1303.39 Effect of instrument on obligation for which  
21 taken - UCC 3-310**

22 (A) Unless otherwise agreed, if a certified check,  
23 cashier's check, or teller's check is taken for an  
24 obligation, the obligation is discharged to the same  
25 extent discharge would result if an amount of money  
26 equal to the amount of the instrument were taken in  
27 payment of the obligation. The discharge of the  
28 obligation does not affect any liability that the  
obligor may have as an indorser of the instrument

1 taken in payment of the obligation.

2 (B) **Unless otherwise agreed** and except as provided in  
3 division (A) of this section, **if a note or an**  
4 **uncertified check is taken for an obligation, the**  
5 **obligation is suspended to the same extent the**  
6 **obligation would be discharged if an amount of money**  
7 **equal to the amount of the instrument were taken, and**  
8 **all of the following rules apply:**

9  
10 (1) **In the case of an uncertified check, suspension of**  
11 **the obligation continues until dishonor of the check**  
12 **or until it is paid or certified.** Payment or  
13 certification of the check results in discharge of the  
14 obligation to the extent of the amount of the check.

15 (2) **In the case of a note, suspension of the**  
16 **obligation continues until dishonor of the note or**  
17 **until it is paid.** Payment of the note results in  
18 discharge of the obligation to the extent of the  
19 payment.

20 (3) Except as provided in division (B)(4) of this  
21 section, if the check or note is dishonored and the  
22 obligee of the obligation for which the instrument was  
23 taken is the person entitled to enforce the  
24 instrument, the obligee may enforce either the  
25 instrument or the obligation. In the case of an  
26 instrument of a third person that is negotiated to the  
27 obligee by the obligor, discharge of the obligor on  
28 the instrument also discharges the obligation.

1 (4) If the person entitled to enforce the instrument  
2 taken for an obligation is a person other than the  
3 obligee, the obligee may not enforce the obligation to  
4 the extent the obligation is suspended. If the obligee  
5 is the person entitled to enforce the instrument but  
6 no longer has possession of it because it was lost,  
7 stolen, or destroyed, the obligation may not be  
8 enforced to the extent of the amount payable on the  
9 instrument, and to that extent the obligee's rights  
10 against the obligor are limited to enforcement of the  
11 instrument.

12 (C) If an instrument other than one described in  
13 division (A) or (B) of this section is taken for an  
14 obligation, division (A) of this section shall apply  
15 if the instrument is one on which a bank is liable as  
16 maker or acceptor, and division (B) of this section  
17 shall apply in all other instances.

18 Effective Date: 08-19-1994;

19 14. Affiant, on behalf of Defendants, did tender payment in the  
20 instant case through return of the instrument, indorsed, a  
21 copy of which is attached hereto as if stated herein  
22 Defendant's Exhibit "A". Affiant did, on behalf of  
23 Defendants, notify the court of the purpose of the payment  
24 in Affiant's filing of August 25, 2008, titled "AFFIDAVIT  
25 OF ORIGINAL ISSUE, NOTICE TO THE COURT OF DEFENDANTS  
26 ACCEPTANCE OF THE CLAIM AND NOTICE OF THE COURTS  
27 ABANDONMENT OF CLAIM", point 14, to wit:

28 14. So as to ensure that no controversy exists, the

1 original issue price of \$26,558.18 for claim or case  
2 number 07CVE-02-2414 is accepted as value and returned  
3 for settlement and closure of the accounting (attached  
4 hereto as if stated herein Defendant's Exhibit "A");

5 The claim in the instant case is ordered to be discharged  
6 as fully satisfied and all orders issued by the court shall  
7 be ordered vacated or rescinded unless, within five  
8 business days from the date of filing of this notice,  
9 plaintiff or the court provide evidence that the payment  
10 lawfully tendered to the Clerk of Court on August 25, 2008  
11 has been dishonored. This demand is made in accord with  
12 law, specifically ORC 1303.40, to wit [emphasis added]

13 **1303.40 Accord and satisfaction by use of instrument -**  
14 **UCC 3-311**

15  
16 **If a person against whom a claim is asserted proves**  
17 **that that person in good faith tendered an instrument**  
18 **to the claimant as full satisfaction of the claim,**  
19 **that the amount of the claim was unliquidated or**  
20 **subject to a bona fide dispute, and that the claimant**  
21 **obtained payment of the instrument, all the following**  
22 **apply:**

23 (A) Unless division (B) of this section applies, the  
24 claim is discharged if the person against whom the  
25 claim is asserted proves that the instrument or an  
26 accompanying written communication contained a  
27 conspicuous statement to the effect that the  
28 instrument was tendered as full satisfaction of the  
claim.



1 (B) Subject to division (C) of this section, a claim  
2 is not discharged under division (A) of this section  
3 if either of the following applies:  
4

5 (1) The claimant, if an organization, proves both of  
6 the following:

7  
8 (a) Within a reasonable time before the person against  
9 whom the claim is asserted tendered the instrument to  
10 the claimant, the claimant sent a conspicuous  
11 statement to the person that communications concerning  
12 disputed debts, including an instrument tendered as  
13 full satisfaction of a debt, are to be sent to a  
14 designated person, office, or place.

15 (b) The instrument or accompanying communication was  
16 not received by that designated person, office, or  
17 place.

18  
19 (2) The claimant, whether or not an organization,  
20 proves that within ninety days after payment of the  
21 instrument, the claimant tendered repayment of the  
22 amount of the instrument to the person against whom  
23 the claim is asserted. Division (B)(2) of this section  
24 does not apply if the claimant is an organization that  
25 sent a statement complying with division (B)(1) of  
26 this section.

27 (C) **A claim is discharged if the person against whom**  
28 **the claim is asserted proves that within a reasonable**  
**time before collection of the instrument was**

1 initiated, the claimant, or an agent of the claimant  
2 having direct responsibility with respect to the  
3 disputed obligation, knew that the instrument was  
4 tendered in full satisfaction of the claim.

5 Effective Date: 08-19-1994 ;

6  
7 15. Payment of the sum due and owing in this case was made in  
8 full in accord with public law 73-10 and the Ohio Revised  
9 Code by and through the exhibits included herein as well as  
10 with previous filings. Failure or refusal to accept and  
11 process the included payment shall constitute payment in  
12 full under the Ohio revised code Title 13 chapter 1303:

13 **1303.68 Tender of payment - UCC 3-603**

14 (A) If tender of payment of an obligation to pay an  
15 instrument is made to a person entitled to enforce the  
16 instrument, the effect of tender is governed by  
17 principles of law applicable to tender of payment  
18 under a simple contract.

19 (B) **If tender of payment of an obligation to pay an**  
20 **instrument is made to a person entitled to enforce the**  
21 **instrument and the tender is refused, there is**  
22 **discharge,** to the extent of the amount of the tender,  
23 of the obligation of an indorser or accommodation  
24 party having a right of recourse with respect to the  
25 obligation to which the tender relates.

26 (C) **If tender of payment of an amount due on an**  
27 **instrument is made to a person entitled to enforce the**  
28 **instrument, the obligation of the obligor to pay**

1 interest after the due date on the amount tendered is  
2 discharged. If presentment is required with respect to  
3 an instrument and the obligor is able and ready to pay  
4 on the due date at every place of payment stated in  
5 the instrument, the obligor is deemed to have made  
6 tender of payment on the due date to the person  
7 entitled to enforce the instrument.

8 Effective Date: 08-19-1994

9  
10 16. Failure to rebut as required, with specificity, the  
11 previous filings and payment by Affiant, on behalf of  
12 Defendants, constitutes agreement and acceptance of the  
13 payment as stipulated prior and has settled and closed this  
14 case by equitable estoppel. Silence is acquiescence.  
15 See: Connally v. General Construction Co., 269 U.S. 385,  
16 391. Notification of legal responsibility is "the first  
17 essential of due process of law." Also, see: U.S. v.  
18 Tweel, 550 F. 2d. 297. "Silence can only be equated with  
19 fraud where there is a legal or moral duty to speak or  
20 where an inquiry left unanswered would be intentionally  
21 misleading."

22 Further Affiant saith naught.

23 Verification: I Marc Harry Fishman am the authorized  
24 representative of the Defendant in the above captioned case. I  
25 have read the above captioned Affidavit of Original Issue, the  
26 statements, laws, statutes, and applicable codes and affirm on  
27 my commercial liability that they are true, correct, and not  
28 misleading to the best of my knowledge and belief.

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Dated this 26 day of September, 2008.

By: \_\_\_\_\_  
Marc Harry Fishman,  
Authorized Representative

**CERTIFICATE OF SERVICE**

COMES NOW, Marc Harry Fishman, with this **NOTICE OF DEFAULT AND, OPPORTUNITY TO CURE AND NOTICE OF BREACH OF FIDUCIARY DUTY.**

To be placed before the Clerk of Court of Franklin County on this twenty-sixth day of the ninth month in the Year of Our Lord twenty naught eight AD, and of the Independence of the united States of America the two hundred thirty-second year.

The foregoing ADMINSTRATIVE NOTICE AND DEMAND WRIT OF ERROR CORAM NOBIS DEMAND FOR DISMISSAL OR REVERSAL FOR LACK OF JURISDICTION has been served on all parties to this action by sending to them, on this 26<sup>th</sup> day of September, 2008, by United States Postal Service regular mail, one paper copy, in an envelope properly addressed as indicated as follows:

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Marc Harry Fishman, non-corporate

**TO:**

Clerk of the Court

John O'Grady  
Clerk of The Courts of Common Pleas  
Franklin County Hall of Justice  
369 South High Street, 3rd Floor

1 Columbus, OH 43215

2  
3  
4 **CC:**

5 Recipient

6  
7 Adria Fields

8 Franklin County Prosecutor's Office

9 373 South High Street

10 14<sup>th</sup> Floor

11 Columbus, Ohio 43215

12  
13 Stan C. Cwalinski

14 c/o Keith D Weiner & Assoc Co

15 4<sup>th</sup> Floor

16 75 Public Square

17 Cleveland, Ohio 44113

18  
19 Leonard A. Cuilli

20 c/o Keith D Weiner & Assoc Co

21 4<sup>th</sup> Floor

22 75 Public Square

23 Cleveland, Ohio 44113

24  
25 Kim Hammond

26 c/o Keith D Weiner & Assoc Co

27 4<sup>th</sup> Floor

1 75 Public Square  
2 Cleveland, Ohio 44113

3

4 Bank One National Association as Trustee for CSFB MBS Series  
5 2002-5

6 c/o Homecomings Financial

7 6 Executive Circle

8 Suite 100

9 Irvine, CA 92614

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This is the enforcement for the prior payment made via AAV, MO, 1040-V. When writing this I noticed (in the Ohio Revised Code) that it is a requirement to notify the recipient of the funds that they are in breach of fiduciary duty. If you don't do that then you haven't properly served the required supporting documentation to press forward and receive an approved judicial review of process upon which a lien may be based.

September 30, 2008 a new docket entry showed up but I didn't receive anything from the court via mail and I had not filed anything into the case. The entry is titled MOTION RELEASED TO CLEAR DOCKET. Interestingly, the September 2 filing (AFFIDAVIT OF ORIGINAL ISSUE) now has a new entry under it titled ACTION RELEASED.

October 6, 2008 a new docket entry is made titled NOTICE OF DEFAULT AND OPPORTUNITY TO CURE, AND NOTICE OF BREACH OF FIDUCIARY DUTY which I filed on September 26 and also shows up on the docket for that date with the title AFFIDAVIT FILED.

It appears to me that the court is accepting the 1099/AAV/MO tender and they probably just wish that I'd go away and not bring the IRS into their world. This is the end of the story, at least for now. We're still in the house and all is quiet. I hope that it stays that way.

Ohio does not put the case detail on-line but the docket is available to the public. Anyone interested in seeing the docket can go to <http://www.franklincountyohio.gov/clerk/recordsonline.php> and use the "Case Information Online" link to access it.