

STATE OF WISCONSIN : CIRCUIT COURT : BROWN COUNTY
BRANCH I

MARCO ARAUJO, M.D.,
Plaintiff,

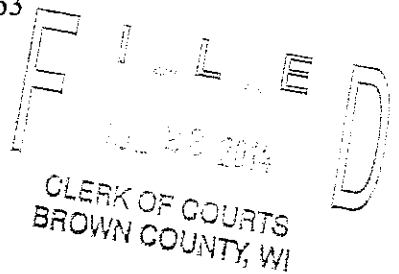
Case No. 13-CV-463

Code No(s). 30301

v.

RONALD H. VAN DEN HEUVEL and
GREEN BOX, N.A. GREEN BAY, LLC,

Defendants.



**THIRD AFFIDAVIT OF JONATHAN T. SMIES IN SUPPORT OF PLAINTIFF'S
MOTION TO STRIKE THE DEFENDANTS' ANSWER AND FOR DEFAULT
JUDGMENT**

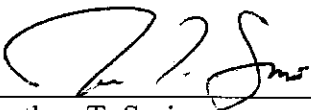
STATE OF WISCONSIN)
) ss.
COUNTY OF BROWN)

I, Jonathan T. Smies, being first duly sworn upon oath, depose and state as follows:

1. I represent the Plaintiff, Marco Araujo, M.D. ("Araujo"), in this matter. I make this affidavit upon my own personal knowledge. I submit this affidavit in support of Plaintiff's Motion to Strike the Defendants' Answer and for Default Judgment.

2. Attached hereto as **Exhibit A** is a true and correct copy of the transcript of the June 17, 2014 deposition of Ty C. Willihnganz. The underlined testimony on Pages 18-26, 29 and 31-33 of the transcript supports Plaintiff's Motion to Strike the Defendants' Answer and for Default Judgment.

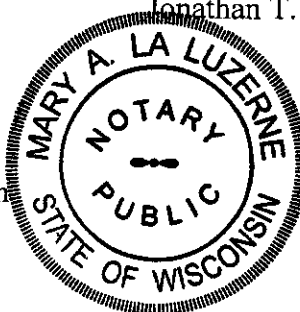
Dated this 22nd day of July, 2014.


Jonathan T. Smies

Subscribed and sworn to before me
this 22 day of July, 2014.


Notary Public, Brown County, Wisconsin

My commission expires: 11-5-17
11841530.1



STATE OF WISCONSIN

CIRCUIT COURT

BROWN COUNTY

MARCO ARAUJO, M.D.,

Plaintiff,

-vs-

Case No. 13-CV-463

RONALD H. VAN DEN HEUVEL and
GREEN BOX N.A. GREEN BAY, LLC,

Defendants.

DEPOSITION OF TY C. WILLIHNGANZ

June 17, 2014

9:37 a.m. to 10:57 a.m.

200 South Washington Street

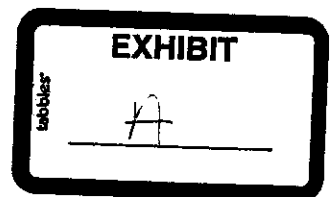
Green Bay, Wisconsin

APPEARANCES:

GODFREY & KAHN, S.C., by **JONATHAN T. SMIES**,
Attorney at Law, P.O. Box 13067, Green Bay,
Wisconsin 54307, appearing on behalf of the
plaintiff.

STELLPFLUG LAW, S.C., by **MICHAEL J. KIRSCHLING**,
Attorney at Law, 444 Reid Street, Suite 200,
De Pere, Wisconsin 54115, appearing on behalf of
Green Box N.A. Green Bay, LLC.

HINKFUSS, SICKEL, PETITJEAN & WEITING, by **JOHN R.
PETITJEAN**, Attorney at Law, P.O. Box 1626, Green
Bay, Wisconsin 54305, appearing on behalf of Ronald
Van Den Heuvel.



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1 (June 17, 2014, 9:37 a.m.)

2 TY C. WILLIHNGANZ,

3 being first duly sworn on oath to tell the truth, the
4 whole truth, and nothing but the truth, testifies as
5 follows:

6 EXAMINATION BY MR. SMIES:

7 Q Good morning. My name is Jon Smies. I represent the
8 plaintiff in this case, Dr. Marco Araujo. Could you
9 please state your full name for the record.

10 A Ty Christopher Willihnganz.

11 Q And what is your address, Mr. Willihnganz?

12 A 1551 Silverstone Trail, Apartment A.

13 Q And I understand you have been deposed before, at least
14 in this case; is that correct?

15 A That is correct.

16 Q Have you ever been deposed other than this case?

17 A No, actually. I've given some but never been--

18 Q Given some depositions. So you understand the
19 procedure?

20 A Yes.

21 Q I'll try to spare you the lengthy instructions I
22 typically give then to deponents given that fact.

23 A Not necessary.

24 Q All right. Just let me know if you're not
25 understanding. My wife says I mumble at times. So

1 please, by all means let me know if you don't
2 understand the question. If you don't say anything,
3 I'll assume you did understand the question. Fair
4 enough?

5 A Very fair.

6 Q Okay. Is there anything that would prevent you from
7 testifying today?

8 A No.

9 Q You mentioned there was some medical issue with your
10 father.

11 A That won't-- I got it together.

12 Q Okay. Very good. What did you do to prepare for this
13 deposition, if anything?

14 A Nothing.

15 Q Okay. You didn't look at any documents?

16 A I have reviewed them in the past.

17 Q Talk to anybody about the deposition?

18 A I did speak with Mr. Van Den Heuvel.

19 Q And when was that conversation?

20 A Yesterday.

21 Q By Mr. Van Den Heuvel, do you mean--

22 A Ronald Van Den Heuvel.

23 Q Okay. Where did that conversation occur?

24 A Outside of my office.

25 Q Where is your office?

1 A I have two of them. I have one at 2077 Lawrence Drive
2 and one at 2107 American Boulevard.

3 Q And would--

4 A This one happened to take place at 2077 Lawrence Drive.

5 Q Was anyone else present for this conversation?

6 A I think we were the only ones left in the office. It
7 was late last night.

8 Q How long did it last?

9 A About ten seconds.

10 Q Literally ten seconds?

11 A Yeah.

12 Q What was the content of the conversation?

13 A He asked me to give truthful-- No, I don't remember.
14 It wasn't-- There was no content, really. Good luck
15 maybe is what he said.

16 Q Okay. Did you in the past provide legal services to
17 Green Box Green Bay N.A., LLC?

18 A Yes, I did.

19 Q How about same question with respect to
20 Mr. Van Den Heuvel personally?

21 A Yes.

22 Q How would you characterize that arrangement under which
23 you provided those services?

24 A Can you be more specific?

25 Q Were you an employee of Green Box?

1 A No, I wasn't.

2 Q What was the nature of the relationship?

3 A The provision of legal services on request.

4 Q Did you charge a fee for your services?

5 A There was an understanding that money would be provided

6 to me as financing came in. So it was not speculative,

7 but it was an arrangement that was informal, I would

8 say.

9 Q I see. When did you first begin providing legal

10 services for Green Box? When I refer to Green Box, I'm

11 referring to Green Box Green Bay N.A., LLC.

12 A The whole shebang over there?

13 Q Sure, Green Box and/or Mr. Van Den Heuvel.

14 A I would say 2012.

15 Q Since 2012 until you ceased providing such services,

16 how many hours on average would you work in a legal

17 capacity for--

18 A Mr. Van Den Heuvel?

19 Q Or Green Box.

20 A Green Box.

21 MR. PETITJEAN: Objection. Vague. What

22 period of time are we talking about?

23 Q Beginning in 2012 through, shall we say, June of 2013.

24 A I was available 60 hours a week. Did I--did I actually

25 work or was I working on legal assignments all that

1 time? No. But I was available 60 hours a week, six
2 days a week.

3 Q In a typical week if you could render an average
4 estimate as to how many hours per week you worked,
5 actually worked, as opposed to being available.

6 MR. KIRSCHLING: And you're talking about
7 Green Box and Ron?

8 MR. SMIES: For either client, correct.

9 A Are you talking about availability or work product?

10 Q Time actually spent working on a matter for either
11 Green Box or--

12 A Well, it works sort of like this: I'm there. Perhaps
13 I'll have other clients, you know. Not at the moment,
14 but in the past. I'd be there, and if things begin to
15 germinate where there is going to be financing coming
16 in or--I would then be working massive hours for them.
17 But-- And then at other times, you know, they really
18 don't have anything going on, and I'll be working not
19 quite as many hours there. So I can't really give you
20 an estimate. It comes in a rush.

21 Q Sure.

22 A That's how I would describe it.

23 Q Was there a written contract between you and either
24 Green Box or Mr. Van Den Heuvel?

25 A There never was. Mr. Van Den Heuvel and I have a

1 relationship going back to the 1990s. He's a family
2 friend, good friend. He gave me a job when I was in
3 college to help pay for my college. He's always been a
4 friend to me, so we had a very informal relationship.

5 Q What was that job you had for him in college?

6 A That was when he was with Vos Electric, so I was one of
7 the-- What would you call it? It's a little bit above
8 gofer, but I could do electrical work, so that's what I
9 was--electrical construction.

10 Q Okay.

11 A I think they called it helper.

12 Q A helper. So there was an understanding, no written
13 agreement, but the understanding was that you would be
14 compensated something for your services upon the
15 realization of a sum or the obtaining of some financing
16 by either Green Box or Van Den Heuvel; is that fair?

17 A That's absolutely correct, actually.

18 Q Were there instances in which you were actually paid
19 for your services?

20 A Yes, but not--it hasn't been what, you know, the
21 promises don't always manifest into payment.

22 Q When you say "promises," what do you mean by "the
23 promises"?

24 A He makes kind of-- I don't know. He-- His promises
25 are somewhat-- And I understand what they are.

1 They're somewhat rosy. Things that, you know, might
2 happen and they don't happen. He means well, but
3 sometimes it doesn't pay out. Now, the reason that--
4 Well, never mind.

5 Q I want to explore this notion of promises a little
6 further. Would it be along the lines of if we obtain
7 such and such financing, you'll get a certain
8 percentage of it or I'll give you X amount upon our
9 obtaining financing? How would you--

10 A Exactly. He would say when that comes in, you'll get
11 20 grand. I know, I mean, that maybe I'll get, if I'm
12 lucky, two, you know. But he provides me with office
13 space, and he's done so for several years, and that's a
14 very valuable thing in itself.

15 Q When did you first start occupying that office space?

16 A When I-- 2012, whenever.

17 Q Okay. This is the office space at 2077 Lawrence Drive?

18 A Yes. And recently I've also been granted office--
19 That's my main office now is at 2107 American
20 Boulevard. Now, Ron will ask me to come over, I need
21 you, so I have an office also at 2077 because he
22 operates on, you know, an as-needed basis, and lately
23 I've been needed.

24 Q What have you been needed for lately?

25 A Well, we've got financing on the horizon, several

1 different deals. I mean, I don't want to go into
2 specifics, because that's sort of attorney-client
3 privilege. But in general, I will just say we are
4 attempting to finance different projects. And in that
5 arena, I'm--my services are necessary or valuable.

6 Q So to be clear, in this recent work-- And when you say
7 recent, what time frame are we talking?

8 A Last several days, weeks.

9 Q Are these services legal services in nature, or are
10 they some other-- How would you characterize the work
11 you're doing? You mentioned attorney-client privilege.
12 I just want to be clear if you're performing services
13 as a lawyer.

14 A Yes.

15 Q What was your understanding regarding the payment of
16 your dues for the State Bar of Wisconsin?

17 A He said he would cover them.

18 Q When did he tell you that?

19 A On several different occasions. All of my costs,
20 including dues.

21 Q Would that include tuition for CLE courses?

22 A Yes, it would.

23 Q To your knowledge, did he ever cause a payment to be
24 made for your bar dues?

25 A Recently, yes.

1 Q When did that happen?

2 A When was that? When was that? I can't give you a
3 specific day. It was in the last two months.

4 Q Were there any payments initiated by Mr. Van Den Heuvel
5 prior to that for your bar dues?

6 A It was a funny situation. They said that they did, but
7 then come to find out a couple weeks later that I was
8 suspended, so she didn't. It was a mix-up, and it's
9 been rectified.

10 Q When you say "they said," who told you that the payment
11 had been made?

12 A His wife, actually.

13 Q And what's his wife's name?

14 A Kelly.

15 Q Does she have any role at Green Box?

16 A She does. She's got ownership there, and for a period
17 she was occupying an office. And lately, I guess, she
18 works out of her home. I'm not certain. I don't want
19 to speculate.

20 Q When you say "ownership," she's a member then of the
21 LLC?

22 A Yes, she is.

23 Q Who are--

24 A Through her.

25 Q --the other members of the LLC?

1 A Which LLC?

2 Q Green Box Green Bay N.A.

3 A N.A. Green Bay? He has several companies.

4 Q Green Box N.A. Green Bay, comma, LLC.

5 A I could not give you good information. I could get

6 that over to you.

7 Q Sure. I'd appreciate that.

8 A There's different LLCs.

9 Q That would be helpful.

10 A Your client's on there.

11 Q Let's get back to her ownership interest. Could you

12 describe your knowledge of what her interest may be.

13 A She has her own company, KYHKKG, and through that she

14 owns membership units in Green Box. Hold on, I can't

15 say that with certainty. It would just speculative. I

16 don't want to speculate.

17 Q Fair enough.

18 A I know she has ownership in companies. I shouldn't say

19 specifically because I'd have to have the list in front

20 of me.

21 Q Fair enough. I don't want you to speculate.

22 So your testimony is that recently, maybe in the

23 last two months, you believe Mr. Van Den Heuvel caused

24 your bar dues for the State Bar of Wisconsin to be

25 paid. So we're clear, there hadn't been any payment

1 initiated by Mr. Van Den Heuvel prior to that time?

2 A No.

3 Q How about CLE course tuition?

4 A Well, I got a loan from the companies, and then I ended
5 up paying for it and scrounging up the fee courses that
6 were available. So that got taken care of. I guess I
7 didn't need quite as many as I did. I was confused,
8 whatever. It's not an issue. But they got taken care
9 of.

10 Q You obtained sufficient credits for the CLE--

11 A Yes.

12 Q Did Mr. Van Den Heuvel ever cause the payment of your
13 CLE course tuition?

14 A I think he paid for some of them, I guess, indirectly.

15 Q What do you mean by indirectly?

16 A I know they put a few of them on the credit card. I
17 paid for some of them. Some of them were free.

18 Q When did these payments occur?

19 A There was the one for the CLE that was the eggs
20 breakfast and ethics. That was paid the day before.

21 Q That's making me hungry.

22 A Yeah. It wasn't that great. That one was paid by the
23 accountant there. Not accountant, bookkeeper, Tammy
24 Phillips.

25 Q When did that CLE occur?

1 A June of 2013.

2 Q Any other examples you can think of?

3 A Where they paid for CLE?

4 Q Correct.

5 A I know they did in the past. That's all I can say.

6 Q Okay. Your license was suspended--license to practice
7 law, I should say, in 2013; is that correct?

8 A That is correct.

9 Q How did that come about? Do you know?

10 A Because of insufficient CLE credits.

11 Q Did that take you-- Were you surprised by that when
12 you learned that you were--

13 A I knew it was coming, but I couldn't get anyone to
14 advance me the money. Money is always tight because
15 we're a start-up company, you know, and so you don't
16 know when financing is coming. We haven't quite got to
17 the point where we're active. I mean, we have now
18 converting operations, but it's not the full project
19 vision quite yet. So we're always kind of-- There are
20 periods when finances are dry, and that happened to be
21 one of them. And at that time usually my--my leads are
22 pushed to the back of the burner.

23 Q I understand. Where is this converting operation
24 occurring?

25 A 2107 American Boulevard.

1 Q And that's the same address then as your second
2 business address?

3 A Yes, but what they have is they have a business on this
4 side, and then Dan Platkowski had an old engineering
5 firm on the other side, and they've given me space
6 there. He abandoned it.

7 Q Dan Plakowski?

8 A Platkowski, P-L-A-T-K-O-W-S-K-I. An engineer, a fine
9 man.

10 Q What do you do out of that office at 2107 American
11 Boulevard?

12 A Can I grab some coffee quick?

13 Q Please.

14 A What do I do there? It's the same duties basically.
15 The idea is to establish a practice that is available
16 to Ron and--but at the same time I'm looking to get
17 outside clients so I'm not quite as dependent upon Ron
18 because, you know-- For one thing, once the
19 thing--once the project gets completely going, I don't
20 know that they will need that much legal work anymore.
21 At that time I'm hoping that I'll be spun off into an
22 individual practice. And there's other offices there
23 available, you know, to possibly--if business comes in
24 to expand. So that's the general business plan.

25 Q So at both locations, whether it's American Boulevard

1 or Lawrence drive, is it fair to say much of your
2 duties are akin to an in-house counsel?

3 A Yeah, that's sort of the quasi-role that I play as a
4 contractor.

5 Q Fair enough. So your failure to complete the necessary
6 CLE credits was the initial reason for the suspension
7 of your license?

8 A Yes, that's correct.

9 Q Did you ever also have any-- Did you ever see any
10 notification from the state bar that there was a
11 failure to pay the actual state bar dues?

12 A Actually, what happened there was finally I got--as I
13 said before, Kelly, she agreed and said I'll take care
14 of that. She said she paid it. She made it very
15 convincing that she did. And then on November 1st I
16 got a letter from the state bar and my name was on
17 there that it hadn't been paid. I guess it was just a
18 mix-up. She's a--she's an outstanding woman.

19 Q You don't think she was trying to deceive you?

20 A I don't know what happened, actually. Maybe the credit
21 card didn't work. I was confused by the whole--

22 Q Did she ever tell you that she contacted the state bar
23 and claimed that the payment had been made?

24 A Actually, no. She's a great woman, but she came up
25 with a conversation that she had, and she said that

1 they asked whether I had taken my courses. And I
2 thought, well, that's odd. Why would they ask that?
3 You know what I mean? But it didn't strike me as-- I
4 don't know what was going on there. It was odd.

5 But she said that she took care of it. And
6 actually in the past she had done that and kind of in
7 the same manner, so I didn't think anything of it. So
8 I was a little bit shocked when--when I got the
9 suspension notice. I don't know what happened. I'm
10 not clear. But now it's taken care of, so bygones are
11 bygones. I'm not--

12 Q So Kelly Van Den Heuvel is an owner in some way, shape,
13 or form of Green Box; is that--

14 MR. KIRSCHLING: Objection to the form.

15 Q Does Kelly Van Den Heuvel perform any duties for the
16 company?

17 A Her duties are-- What would be the proper term? She
18 has a-- They're general, and she'll do marketing,
19 she'll do-- I mean, when staff is low, she'll pitch in
20 on anything, actually. Just advances the company's
21 interest.

22 Q Does she have any formal title?

23 A Not that I know of. She might. I don't know.

24 Q And in your experience, did she have the ability to pay
25 bills on behalf of the company?

1 A Yes.

2 Q What authority was that? Was it a signature authority
3 on the checking account? Can you explain?

4 A Now you have to be more specific about which company
5 you're talking about.

6 Q Go back to--

7 A Green Box?

8 Q --Green Box N.A. Green Bay, LLC.

9 A I can't answer that. I would only be speculating. I
10 don't understand how payments are made.

11 Q Would she have the ability to cause a payment to be
12 made on behalf of at least one of the entities that's
13 affiliated with Mr. Ronald Van Den Heuvel?

14 MR. KIRSCHLING: Object to the form of the
15 question.

16 Go ahead. You can answer.

17 A All I will say is this: I've seen her pay bills, and I
18 believe they were business related. And I do believe
19 that she does have authority. No, that's a
20 wrong--incorrect answer. I've known in the past she
21 has had credit card authority. I've seen it.

22 Q Do you know when your clients became aware that you
23 were no longer able to practice law in Wisconsin?

24 A June of 2013.

25 Q How do you know that?

1 A Mr. Van Den Heuvel said something to me.

2 Q What did he say?

3 A I can't recall, but the subject matter was so you lost
4 your license.

5 Q You don't know how he came to that knowledge?

6 A He saw the notice, I believe.

7 Q How did he see the notice, if you know?

8 A I really don't recall.

9 Q Did the notice come by mail?

10 A Yes.

11 Q And to which address did it come by mail, if you know?

12 A 2077 Lawrence Drive.

13 Q Do you recall whether he saw the notice before you did?

14 A No, I don't believe that that's true.

15 Q Do you recall giving him the notice?

16 A I don't know if I gave it to him or someone else showed
17 it to him. I think it came, and then the next day I
18 had a golf outing, and I think it was on my desk and
19 somebody saw it. This is all speculation. This
20 isn't--

21 Q I don't want you to speculate, but I want you to think
22 back. Do you recall receiving in the mail and opening
23 a piece of mail from the State Bar of Wisconsin?

24 A I do.

25 Q And this was the notice that your license was

1 suspended?

2 A Yeah.

3 Q Other than confronting you or telling you, hey, so you
4 lost your license, what, if anything, did
5 Mr. Van Den Heuvel do as a result?

6 A Asked me-- I think the subject of the--any
7 conversations after that was how do you go about
8 getting your license back? And I said I need some
9 funding, and at that time we had no funding. So it
10 was kind of those things like, we'll get you the money,
11 we'll get you the money, and it was sort of a waiting
12 game.

13 Q Was there any discussion about the impact your
14 suspension would have on your ability to represent
15 either Green Box N.A. Green Bay, LLC, or
16 Mr. Van Den Heuvel in this case, the case filed by
17 Dr. Araujo?

18 A Yes.

19 Q And what was the nature of that discussion?

20 A I was no longer capable of representing anyone in
21 litigation or practicing law in any form.

22 Q Is what that you told Mr. Van Den Heuvel?

23 A I don't remember my exact words with him, but that was
24 the crux of it.

25 Q What did he say in response to that?

1 A What do we need to do to get your license back? At
2 which time I would say I need then do the next cycle.
3 People don't understand that. You tell them, you know,
4 why don't you--you got to do the next cycle. It's very
5 important not to miss that. People don't really get
6 that. But I think he understood. But it's just one of
7 those things where we didn't have the financing at the
8 time. And when it came--financing came in, Ty's CLE
9 was number 42 on the list. And I understand that.
10 People need to be paid.

11 Q Did Mr. Van Den Heuvel ever indicate whether he would
12 seek to have you substituted as counsel of record in
13 this case?

14 A That was the plan. I kind of understood that, you
15 know, it was a matter of financing. You know, we
16 needed to--you'd have to pay a retainer. I mean,
17 that's just how it works and--

18 Q And the basis of that understanding, is it a statement
19 from Mr. Van Den Heuvel?

20 A No statement, just my--my analysis of the situation. I
21 would assume he would have hired John or Dave
22 Stellpflug if he had the money at that point.

23 Q Knowing the delay in time from the point of your
24 suspension and how long it would take to get the
25 funding and get the classes done and everything else,

1 at that point did you tell Mr. Van Den Heuvel you need
2 to obtain replacement counsel?

3 A Yeah. Yes, I did.

4 Q Was this in June of 2013?

5 A I don't recall, but it was--I think it must have been.

6 Q What was Mr. Van Den Heuvel's response to that?

7 A He'll get it done. He'll get it done. His heart's
8 always in the right place, but, you know, there isn't
9 always money there to get the, you know, as I was
10 describing before, to get-- That was--that's--that was
11 the issue.

12 Q Are you aware of any efforts he or anyone else at Green
13 Box may have made to obtain substitute counsel after
14 June of 2013?

15 A I can't say. I can't comment on that.

16 Q Did he ever ask you for any recommendations as to who
17 might replace you?

18 A No. I think it's pretty understood that Dave
19 Stellpflug or John Petitjean or--or Dave Stellpflug's
20 firm, I should say. They or John Petitjean are the go-
21 to attorneys. They do a fine job.

22 Q Is it true that you filed a motion to withdraw as
23 counsel in this case on August 15, 2013?

24 A That is correct.

25 Q Why did you do that?

1 A Because I needed to get off of the two cases that I was
2 still on.

3 Q What was the other case, by the way?

4 A The other case was Ron Van Den Heuvel versus Danielle--
5 It was a medical case. Danielle something and
6 St. Vincent's and--

7 Q Was Mr. Van Den Heuvel a plaintiff in that case?

8 A Yes, he was.

9 Q Was that an action for medical malpractice?

10 A Yes, it was.

11 Q And you filed a motion to withdraw in that case as
12 well; is that correct?

13 A Yes.

14 Q If you have to think back, you said you mentioned at
15 least in June of 2013 you mentioned Mr. Van Den Heuvel
16 the importance of finding a replacement or substitute
17 counsel in this case; is that correct?

18 A Uh-huh. Yes. Excuse me, yes.

19 Q How many times did you mention this to
20 Mr. Van Den Heuvel or anyone else at Green Box, for
21 that matter?

22 A I can't-- I don't know. I really don't know.

23 Q Was it more than once?

24 A More than once, yes.

25 Q Any knowledge of the frequencies of these

1 conversations? Was it something you thought of on a
2 weekly basis, something you followed up on repeatedly?
3 A I would speak to people about it, but I knew--I know
4 when financing is coming in and I know when, you know,
5 when it hits, and that's when action takes place. For
6 me to-- I mean, I would mention things to him, but I
7 knew that, you know, there was no point in constantly
8 mentioning it. It wasn't going to happen. By
9 August 15th, I just, you know, I couldn't go any
10 further. It should have happened earlier.
11 Q When you say you would speak to people about it, who
12 would you speak to other than Mr. Van Den Heuvel?
13 A Phil Reinhart.
14 Q And what is his role at Green Box?
15 A He-- His title is director of human resources, but
16 he's a Mr. Everything at Green Box. And at that time
17 he was the staff of Green Box. He did everything,
18 everything. He did yeoman work.
19 Q On a daily basis then would one expect to find-- This
20 is in the June of 2013 to August 15, 2013, time frame.
21 Would one expect to find-- I guess I'm asking, who
22 would one expect to find at Green Box working?
23 A Phil Reinhart.
24 Q Ron Van Den Heuvel?
25 A Oh, yes, Ron always.

1 Q And would Kelly be there at that time also?

2 A No, she got involved more intensely after, I think,
3 maybe in September or October for a period of time.
4 That's when things began to pick up because we closed
5 on the Stonehill. But from June to September something
6 we had no money, we had no staff.

7 Q These conversations you had about the importance of
8 finding replacement counsel, you apparently had them
9 both with Mr. Van Den Heuvel and Mr. Reinhart; is that
10 fair?

11 A Yes.

12 Q Do you have any recollection of how many times you
13 spoke with each of these respective gentlemen on this
14 issue?

15 A I believe I-- I don't know. I'm not sure. I would
16 bring it up.

17 Q And you're aware that the plaintiff in this case served
18 some discovery requests? Is that fair to say?

19 A Yes, I'm aware of that.

20 Q Did you have any conversations with Mr. Van Den Heuvel
21 or anyone else at Green Box about the need to respond
22 to plaintiff's outstanding discovery requests?

23 A Yes, I tried to get-- Before June of--or maybe in
24 early June, Debbie Starry was there, and she was the
25 person to go on everything. Now--

1 Q Debbie Starry, what was her role?

2 A She was Ron's executive assistant, but almost like a
3 number two person. She had more authority than that.
4 She had more informal authority than that, I should
5 say.

6 Q Assistant?

7 A Yes. She knew where records were, where--because as I
8 recall, you made several document requests that
9 required, you know, a lot of knowledge of where things
10 were that I didn't have.

11 Q Do you recall when either Ms. Starry or
12 Mr. Van Den Heuvel or anyone at Green Box, for that
13 matter, first learned of the discovery request?

14 A Whenever they were made, I guess.

15 Q So your recollection, is it fair to say, is that when
16 you received--whenever they were served, you received
17 the discovery requests and then immediately conveyed
18 them to someone at Green Box?

19 A Yes.

20 Q And who did you convey those to?

21 A I don't recall. I really don't recall.

22 Q Did you have occasion to remind Mr. Van Den Heuvel
23 about the importance of responding to plaintiff's
24 discovery requests?

25 A Yes, because we did respond. We didn't respond

1 completely, but we did respond.

2 Q Did you have any conversations with Mr. Van Den Heuvel
3 about the document production request?

4 A I'm sure-- I don't want to speculate. Yes, I think.
5 It's difficult to recall what-- I mean, we went
6 through the whole thing.

7 Q Do you recall receiving the document production
8 request, correct?

9 A Yes, it was all of a piece.

10 Q And then do you recall some correspondence from either
11 me or Attorney Ostrow regarding the lack of response as
12 to the document production at least?

13 A Yes, I do recall that.

14 Q At that point did you then go back to either
15 Mr. Van Den Heuvel or someone else at Green Box and
16 emphasize the importance of finding these documents?

17 A I believe at that time the staff had all quit, everyone
18 who knew where the things were, Tammy Phillips Debbie
19 Starry. Tammy's now back with us. Debbie never--was
20 not re-retained. They knew where everything was.

21 Q Did you either tell either Tammy or Debbie--

22 A They were gone.

23 Q They were gone at this point?

24 A Yes.

25 Q Were you able to tell anyone we need to find these

1 documents, responsive documents?

2 A I think I had that conversation with Phil about it.

3 Q Do you recall when that conversation would have
4 occurred?

5 A In June.

6 Q And what did Phil say in response?

7 A Probably talk to Ron.

8 Q Did you speak with Ron?

9 A I don't recall if I did.

10 Q Are you aware of any efforts by Mr. Reinhart to locate
11 documents that would be responsive?

12 A I believe he--I believe he said when Tammy comes back,
13 she'll know where they are.

14 Have they complied with that request to date?

15 Q I think-- I'll represent to you that we still haven't
16 received the documents that are responsive to that
17 request, but we're in the midst of a-- I won't bore
18 with you the details of the current proceedings. I'll
19 leave it at that.

20 So what follow-up, if any, did you make then to
21 see that there was responsive documents provided to the
22 plaintiff?

23 A I don't recall when it happened, but I think-- Where
24 was Tammy at? I believe Tammy came back, and I said,
25 Tammy, we got to get these documents. You got to come

1 over for week and help me get-- Because it was a
2 comprehensive list of documents that I had no idea
3 where they were. I don't recall-- I don't think Tammy
4 would have been at Stonehill at that time. My memory
5 fails me, but--and she has a-- You know, we got to get
6 these documents in, and she said, sure, sure, sure,
7 I'll help you and then--

8 Q And at that the point Tammy's role--what was her role
9 with the company?

10 A I don't remember. She was not in her office. She may
11 have come back and then they-- No, that doesn't make
12 sense. We didn't have Stonehill then. I don't recall
13 where she was working, but she had projects going on
14 and--

15 Q Did you ever emphasize to Mr. Van Den Heuvel the
16 importance of following up and responding to the
17 requests?

18 A You know, I should have done more, but I wasn't getting
19 any assistance and then--

20 Q Did Mr. Van Den Heuvel know you weren't getting the
21 assistance you needed?

22 A That's a good question. I don't know. I'm sure
23 because I told him, you know, it hadn't been done.

24 Q Did you tell him that the plaintiffs--in the
25 plaintiff's view the answers to the interrogatories

1 were deficient? Did you tell him that?

2 A I don't recall that the point.

3 Q At any point did you tell him that?

4 A Yeah, I think I did. I think we had a discussion about
5 it. Just the one--just about the ones that you guys
6 came back and said, well, that's not good enough, as I
7 recall. We made certain answers, and you said the
8 answers weren't responsive to--fully responsive, I
9 think, to the questions, and I tried to explain to him
10 what that meant.

11 Q Did you explain to him that you needed to provide more
12 information?

13 A Yes, but I was trying to be very careful not to
14 practice law at that point. So it was a very dicey
15 situation for me because I thought that--I thought that
16 was my--I thought that was the thing, you know, that
17 would get me in trouble. As it turned out, that wasn't
18 the case. So I was trying to distance myself. I
19 thought that was the best strategy.

20 Q Was this after you advised Mr. Van Den Heuvel he needed
21 to find substitute counsel?

22 A Yes. And, you know, I mean, this lack of communication
23 or whatever it is, you know, I was walking--I felt I
24 was walking a tightrope because, you know, I didn't
25 want him to think I could continue to be his counsel or

1 representative on any of these things. And at the same
2 time they were sitting there not getting done by
3 anyone, and there was no one there to do them.

4 Q You said there was a lack of communication. Where was
5 the communication breakdown?

6 A Sometimes he just-- I don't know. I didn't do a good
7 enough job getting the point across to
8 Mr. Van Den Heuvel. He has a lot--he has a lot on his
9 plate every day. I mean, he runs everything that goes
10 on there, so--

11 Q You don't think he understood you when you said, look,
12 you need other counsel?

13 A No, no. Oh, that's your question?

14 Q That's my question now.

15 A I think he knew that. I think he just knew he didn't
16 have what he needed to get the other counsel at that
17 point. So I'm sure as soon as he got the funding he
18 was going to get new counsel. I think he thinks
19 that--somehow he thinks that lawsuits, you know, when
20 things just aren't really happening, when there's no
21 hearings, there's no need for counsel. I got that
22 impression after the fact.

23 So I didn't do a good enough job of, I guess,
24 explaining to him that at all points in litigation you
25 need counsel or things like this come up. You

1 have--you get paperwork, and paperwork doesn't somehow
2 get down, and then it's a little thing--it's not a
3 little thing, but a thing that we could have responded
4 to. You know, it gets drawn out into this.

5 Q Did you ever explain to him that an LLC, a company,
6 cannot appear pro se, that is, without counsel in
7 litigation in circuit court?

8 A Yes. And he's been involved in litigation for years,
9 so he understood that. In small claims it could
10 happen, but outside of that, he's very--he's very
11 familiar with civil procedure and litigation, which at
12 points can be dangerous.

13 Q Explain how can it be dangerous.

14 A He-- I don't know. I mean, I was being a little bit
15 facetious. But sometimes you think you understand
16 things and really--or, you know, it's almost like if I
17 had my knowledge of medical practice, I mean, you think
18 you know things and then you kind of assume things, and
19 then you might be wrong on that or you might use things
20 in a wrong way. But I guess it can be helpful too, so
21 I guess I contradict myself.

22 Q Did Mr. Van Den Heuvel ever take any measures to
23 respond to plaintiff's objections to the interrogatory
24 responses or the fact that there were no documents
25 produced in response to the production request?

1 MR. PETITJEAN: I'll object to the form of
2 the question. Calls for him to speculate as to the
3 knowledge of a third party.

4 Go ahead and answer, if you can.

5 MR. SMIES: The question was the
6 deponent's knowledge of any action taken by
7 Mr. Van Den Heuvel.

8 MR. PETITJEAN: I don't believe that's
9 what the question was, but I could be wrong. The
10 objection stands.

11 Go ahead and answer.

12 A Now I'm confused as to what the question was.

13 Q Are you aware of Mr. Van Den Heuvel ever taking any
14 measures to respond to plaintiff's objections regarding
15 the interrogatory responses?

16 A No.

17 Q Are you aware of Mr. Van Den Heuvel taking any measures
18 in response to plaintiff's objection regarding the lack
19 of document production?

20 A No, I don't know. No, not to my knowledge.

21 Q And based on your prior testimony, is it fair to say
22 that Mr. Van Den Heuvel was aware of such objections?

23 A If I said it before, I think I was speculating. Now I
24 don't actually recall.

25 Q You don't recall saying to Mr. Van Den Heuvel we just

1 received this letter from Dr. Araujo's counsel. They
2 have concerns about our discovery responses.

3 A I'm sure we did. That's not a good answer. I don't
4 know.

5 Q Was it your-- Did you make a practice of communicating
6 at least in this case with your client,
7 Mr. Van Den Heuvel, concerning any correspondence
8 received by opposing counsel?

9 A Yeah, we would take care of things on Saturdays,
10 anything, because that was the day that he could focus
11 on those matters.

12 Q On Saturdays would you review correspondence or any
13 other pleadings filed during the week prior?

14 A Yes.

15 MR. KIRSCHLING: Just for purposes of
16 clarification, what period of time are we talking
17 about? Before June 12th? After June 12th? Both?

18 THE WITNESS: Well, in that summer period,
19 I wasn't getting paid and I didn't have a vehicle, so I
20 wasn't there. As I testified before, I wasn't there
21 every day. And I don't know, something happened to my
22 mail. I don't know what they--they started mixing it
23 with Ron's. I don't know what happened there, but--

24 Q What led you to believe--

25 A Things--

1 Q Go ahead.

2 A I was distancing myself, so things were--things were
3 not as they usually were.

4 Q With respect to your mail or overall just attendance
5 at--

6 A With respect to everything. It wasn't just the fact
7 that-- It was sort a perfect storm because it wasn't
8 just the fact that I had my lost my license at that
9 time and you had your thing going on, you know, through
10 discovery matter, but it was at a time where everyone
11 on the staff quit. So it was kind of an emergency
12 situation.

13 At the time, you know, still at this time, you
14 know, that Ron--I sort of hitched my wagon to Ron. And
15 so when things broke down there, it broke down for me
16 completely. And that's what, you know, caused all of
17 the-- And I was--at that time I was trying not to--not
18 to present myself as an attorney to him so as not to
19 confuse him that I was still able to practice law
20 because for whatever reason, I mean, I got my license
21 back a month ago, and I told him six times and
22 yesterday he asked me, can you practice law?

23 I don't know why he doesn't always understand what
24 I'm saying, but we're getting better at it. We're
25 getting better at it. And because of this incident,

1 now everything is a lot more formal.

2 Q What sort of duties were you performing when you were
3 without your law license?

4 A I would do things that were just basically draftings.
5 At that point Skip-- What's his name? Everything--
6 All legal matters would go through Skip. I can't
7 remember his last name. I can get it to you.

8 Q Okay.

9 A Skip Starck.

10 Q S-T-A-R-K?

11 A S-T-A-R-C-K, I think.

12 Q Okay. Did Mr. Van Den Heuvel then begin using
13 Mr. Starck at the time you learned that you were
14 without a license or what--

15 A It was more of a transition because he came in with one
16 of the investors, Steve Smith. He's Steve Smith's
17 attorney. That's his firm. So it was more of a
18 transitional thing. And then when my license was
19 suspended, I kind of backed off anything that would be
20 illegal, and I referred it to Skip. But I mean, I
21 would draft things and then--for his review at that
22 point, but I was trying to be careful not to--

23 Q What sort of things would you draft for
24 Mr. Van Den Heuvel?

25 A He always has e-mails that go out, financial documents.

1 Any kind of document, actually.

2 MR. SMIES: Anyone need a short break?

3 (Recess.)

4 Q We're back on the record. I'll remind you you're under
5 oath. You understand that, I assume.

6 A I do.

7 Q I think you had some testimony about leaving the office
8 space at 2077 Lawrence Drive at one point; is that
9 correct?

10 A I was out of my office that I had at 2077 Lawrence
11 Drive.

12 Q When did you leave that office?

13 A That was in the summer of 2013.

14 Q But you're back in that office. Is it the same office
15 that you're back in?

16 A No, I don't have my-- It was the best office there.
17 It's now Kelly's office and locked all the time, so I'm
18 not sure.

19 Q Was it in June of 2013 that you left the office?

20 A I think so, yes. I don't remember.

21 Q Did you have any control-- I guess, at that point did
22 you have any control at all over that office after you
23 left in June of 2013?

24 A No, I was out of there.

25 Q Were there any arrangements made for your mail when you

1 left that office in June of 2013?

2 A Well, no. I assumed it would come to me, but as I said
3 before, I was not coming in before the time because
4 there wasn't money there and things were very, very
5 rough at that time.

6 Q So when you came in occasionally in the period, I
7 guess, roughly the summer of 2013, if it's fair to say
8 that, where would you work in that building?

9 A I was moving all around. I had-- They have many empty
10 offices, so I moved, and Ron would say, well, why don't
11 you take that office. So I didn't actually have an
12 assigned office at that time.

13 Q Do you know where your mail would be delivered during
14 that period of time?

15 A I think it was delivered with their mail, which we've
16 stopped that practice now too. At that time I wasn't
17 an attorney, so--and they lost all their staff, so I
18 was more or less pitching in with the duties of, you
19 know, the administrative staff so--

20 Q Did you ever look for any mail that you might have been
21 receiving?

22 A No, because I was-- I had terminated all my clients
23 except for obviously Ron's companies that I had on--I
24 had no ongoing litigation other than that.

25 Q You mentioned before our break that there was

1 something--something happened to my mail, I think was
2 your phrase. Can you explain that?

3 A Oh, yeah. Some got lost. They were moving my stuff.

4 Q When you say "they," who are we talking about?

5 A His name is Dan. A strong guy. He was moving all of
6 the furniture, and basically Kelly wanted the whole
7 they refurbished at whatnot. So my desk went out, and
8 they emptied it. And these are days, you know, when I
9 wasn't there, so I didn't really know what was going
10 on. But that's what was going on.

11 Q So do you have any reason to believe that
12 Mr. Van Den Heuvel received the mail that had been
13 addressed to you?

14 A Nobody was doing anything deliberately. It was just--

15 Q But whether or not it was deliberate, do you have any
16 knowledge of it happening?

17 A That he would have receive it? Just the last one where
18 it was-- When was that? That was November.

19 Q When you say "the last one," are you referring to a
20 letter from me to the court?

21 A I guess so.

22 Q So what do you think happened to the extent you know to
23 all the other correspondence you would have received in
24 the intervening period?

25 A I don't know.

1 MR. KIRSCHLING: Object to form.
2 Go ahead.
3 A I don't know. I have no--
4 Q Prior to your loss of the license, did you have a
5 certain suite in your address?
6 A Yeah, it was actually Suite B. I don't know. I think
7 the other-- See, what happened was we had two sides,
8 and then I was kind of independent, so I had-- They
9 moved over to the--when Willis abandoned the other
10 side-- I'm not sure if that has a different address.
11 I don't think it does. But anyway, I think that's
12 2077-A. I was over here. I was still an independent
13 contractor. At that point so was Phil Reinhart, I
14 believe. I don't think-- Yeah.
15 Q Do you know if he had a separate suite in his address,
16 Suite C perhaps?
17 A I don't think-- Well, actually, he does receive mail.
18 I don't know why they call it Suite B. Maybe the other
19 side is Suite A. It was just always that way.
20 Q Do you recall how the mail was delivered when you
21 worked there?
22 A Phil would pick it up, I think, the next morning.
23 Q When you say "pick it up," where did Phil go to get the
24 mail?
25 A There's a--on the road there's a line of mailboxes.

1 Q Do you recall whether there was a separate mailbox for
2 each suite or whether they all shared one box?
3 A Oh, no. No, there's at least six of them out there.
4 Q Did Phil have access to the mailbox marked Suite B for
5 your suite?
6 A What do you mean by access?
7 Q You testified earlier that Phil went out to get the
8 mail on a daily basis.
9 A Yeah, it opens.
10 Q Oh, this is not a locked--
11 A No, it's out on the road.
12 Q Okay. Would Phil go to retrieve any mail that would be
13 marked for you?
14 A Not deliberately, but if it was in there--
15 Q Did you ever go out to the mailbox to retrieve your
16 mail?
17 A There was a point when I was on a walking kick and I
18 did go out a couple times to get the mail. I remember
19 that.
20 Q But it wasn't your routine practice?
21 A No, no, no, I didn't have--I didn't have that. No. If
22 I was looking for something in the mail, maybe I would
23 go out there because Phil got it the next day.
24 Q So Phil on a daily basis would go out to these
25 mailboxes; is that correct, plural?

1 A I don't remember if Phil did it or-- Had to be Phil.
2 Could have been Ron once in a while. I don't know. I
3 really don't know.

4 Q Do you know what he would typically do upon retrieving
5 the mail? Would there be a mail call at Green Box?

6 A No.

7 MR. PETITJEAN: I'll object to the form of
8 the question. The question was I don't remember what
9 or who or what he what would do, and he just said he
10 didn't know who retrieved the mail.

11 MR. SMIES: Fair enough.

12 Q What do you recall about how you received your mail on
13 a daily basis prior to the suspension of your license?

14 A Oh, I would get it in my office. That was when I was
15 in my office.

16 Q Would it be delivered by a person?

17 A I think they set it on my chair sometimes. I told them
18 always put it in my inbox, put it in my inbox, but they
19 would set it where they wanted to so--

20 Q Do you recall who would deliver that for you?

21 A I really don't know. I mean, it would--we
22 didn't--we're not--it's a--it's a start-up company.
23 It's not regimented. If we don't have the assistants,
24 Phil would do it. When Debbie was there, she would do
25 it. I would do it once in a while.

1 Q Was it someone from Green Box that would do it?

2 A I don't think we were called Green Box at that time.

3 Maybe we were. One of those--one of the people that

4 were there.

5 Q When you were a contractor, did you have any of your

6 own employees that worked directly for you?

7 A No. I wanted to get interns from St. Norbert, but Phil

8 vetoed that so-- I did not have any employees of my

9 own.

10 Q Thank you. Sorry, I'm just taking a moment to read my

11 notes.

12 I don't think I asked this earlier, but what was

13 your reaction when you learned in June of 2013 that

14 your license had been suspended?

15 A You did ask that. I saw it coming and was powerless to

16 do anything about it.

17 Q Apparently, I need to take better notes.

18 A That's all right.

19 (Exhibit 1 marked.)

20 Q Handing you what's been marked Exhibit 1 for

21 identification. Please take moment and look at the

22 document.

23 A I've seen it. I wrote it.

24 Q So you recognize this document?

25 A I do.

1 MR. PETITJEAN: Counsel, if we could just
2 take a brief moment so I can read this.

3 MR. SMIES: Fine. That's appropriate.

4 (Pause.)

5 Q Looking at what's been marked as Exhibit 1 for
6 identification. I believe your testimony was that you
7 authored this document; is that correct?

8 A I wrote it.

9 Q Is this a letter from you dated April 10, 2014, to the
10 Office of Lawyer Regulation?

11 A It is.

12 Q Is there anything in document you believe is inaccurate
13 or incorrect?

14 A No.

15 Q You mentioned earlier there's a Stonehill Law Office?

16 A That's being established. 2107 American Boulevard.

17 Q It's being established. Would this be a firm with you
18 as a private practitioner, or can you explain sort of
19 the nature of what you envisions this Stonehill Law
20 Office to be?

21 A Didn't I do that?

22 Q Maybe I misunderstood your testimony, but is it part of
23 this other entity? So there's an entity called
24 Stonehill? Is that-- I may have asked--

25 A Stonehill is there, but they answer the phone still on

1 the outside. I have to-- I don't want to deceive
2 people because they'll call in and say Stonehill and
3 they'll say, what is this? So I put on there Stonehill
4 Law Office. When they call in, they know, okay, I got
5 the right number. If I don't in some way identify with
6 Stonehill, I'm afraid the calls will be dropped or
7 lost. Plus the fact that the sign outside says
8 Stonehill. So if you're driving around, you know,
9 you're not going to see it unless, oh, Stonehill.

10 Q So by Stonehill Law Office, that's sort of the legal
11 department of Stonehill--

12 A Not at all. Not at all. It's my attempt, as I was
13 saying, to identify where my office is. At this point
14 I don't have a sign out there that says Stonehill. So
15 I don't want people to-- When people drive by, you
16 know, they're not going to see it unless they think,
17 oh, there's Stonehill.

18 In no way-- In fact, I may have to correct-- I
19 may not be able to go with that scheme anymore because
20 I believe they're no longer going to use the Stonehill
21 trade name. I think that expires maybe next month, so
22 now I've got to come up with a different idea and/or
23 sign of my own.

24 Q When did you-- When was your license to practice law
25 restored?

1 A Not that long ago. I don't remember the date. A
2 couple weeks ago maybe. Actually, it was--the CLE part
3 was a while ago, and then I had to pony up the money
4 to, and that was then it was automatic.
5 (Exhibit 2 marked.)
6 Q Handing you what's been marked as Exhibit 2 for
7 identification. Do you recognize that document?
8 A Yes. That was a motion I filed when you were calling
9 me to testify.
10 Q And the date-- This is correspondence, as I understand
11 it, with a letterhead that says Attorney Ty
12 Willihnganz--
13 A Correct.
14 Q --Stonehill Law Office, dated May 28, 2014--
15 A Yep.
16 Q --and it's letter to the court. Do you know whether at
17 this point in time your license had been restored?
18 A It had been.
19 Q Okay. So is it fair to say it was in May perhaps?
20 A I think it maybe days before that.
21 Q Days before--
22 A I'm just going off of speculation.
23 Q Sure.
24 MR. SMIES: Okay, I think that's all the
25 questions I have unless any of these gentlemen have

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any.

MR. PETITJEAN: No.

MR. KIRSCHLING: No, I don't have
anything.

MR. SMIES: Thank you for your time.

THE WITNESS: No problem.

(Deposition concludes at 10:57 a.m.)

STATE OF WISCONSIN)) SS.
COUNTY OF BROWN)

I, John W. Gales, Registered Merit Reporter and
Notary Public in and for the state of Wisconsin, do
hereby certify that I have carefully compared the
foregoing 47 pages with my stenographic notes, and that
the same is a true and correct transcript.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, or financially interested in said action.

Dated at Green Bay, Wisconsin, on this 30th day
of June 2014.

John W. Gales
Registered Merit Reporter
Notary Public

My commission expires October 18, 2015.

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April 10, 2014

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RE: ANSWER TO COMPLAINT AGAINST TY WILLIHNGANZ

Dear Mr. Broderick:

I will respond to your specific questions at the end of this document, but first I wanted to provide you with an overview regarding my relationship to the client in question.

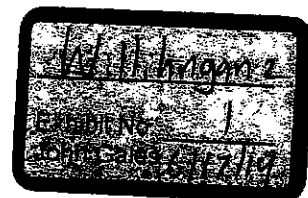
OVERVIEW

First of all, I want to point out that the client who I allegedly failed to keep informed has not lodged a complaint against me, and has in fact fought any complaints about my conduct because it knows that it created conditions that made it extremely difficult for me to fulfill my legal duties. With that said, let me explain my relationship to the client and what took place.

MY RELATIONSHIP TO THE CLIENT

The client in question is an environmental "waste-to-energy" start-up company (I will refer to the client as the "Company"). I worked for the Company as a contractor doing performing tasks that would traditionally be handled by an in-house counsel. In exchange for my legal services, the Company agreed to provide me with office space, a monthly fee, and full coverage of all bar fees and CLE course tuition. The present problems emerged as a direct result of the Company's defaulting upon its promises. For many months of last year I went without payment of any kind and the client did not produce either my bar fees or my CLE tuition.

The failure to pay me or to cover any of the promised professional costs directly resulted in a suspension of my license in June of 2013 for failure to meet CLE requirements (later the Company would also default on my Wisconsin State Bar annual fees, despite TELLING ME that the fees had been paid). The Company was immediately aware of my suspension when it took place, and I informed the Company owners at that time that I could no longer represent the Company in any litigation and that I specifically needed to be removed from the Marco Araujo case immediately. The client promised me repeatedly that I would be removed from the Araujo case, but this never happened, and I was forced to file a Motion for Withdrawal on August 15th.



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MY REQUEST FOR REMOVAL FROM THE ARAUJO CASE AND THE DISCOVERY REQUEST

Between the time of suspension and the filing of my motion, I performed no acts of legal representation for the Company, but I did constantly remind Company officials that I needed to be replaced as counsel in the Araujo matter, and that there was an outstanding discovery request in the matter and that the Company needed to produce all of the documents requested by the Plaintiff. Indeed, the Company had known about the document request since the time it was made (I believe in April of 2013 – though the Company disputes this), and I informed all of the relevant Company personnel that the documents needed to be gathered together and sent to Plaintiff's counsel, but no one at the company took any action in response. It is my belief that the Company staff simply categorized the matter as "legal" and therefore expected me to assemble the necessary documents. But the staff knew fully well that I lacked access to, or knowledge of, the records that were being asked for and that I could not possibly comply with the document request without their assistance.

RESIGNATION OF COMPANY STAFF

In the first weeks of June of 2013, the situation became even more difficult. Not only was I suspended, but shortly thereafter nearly the entire Company staff quit their jobs in response to non-payment of their wages. So the Company was being run by two people, neither of whom had the knowledge necessary to comply with the Plaintiff's document request. So the document demand went unanswered despite my persistent reminders that it needed to be complied with.

MY LOSS OF OFFICE PRIVILEGES

On top of that, after my license was suspended, I lost my office privileges. I was still asked to perform administrative duties and writing assignments for the Company (which I agreed to do only because I knew if I resigned altogether I would never be paid any of the money owed to me) but I no longer had an office. And since I had not received any money for several months, I had no transportation (as it happens the right wheel fell off of my Mercedes – due to shoddy work by AAA, and I was without the means to repair the damage and thus had no vehicle for a substantial period of time – pictures of damage are enclosed) and could only come into work on an irregular basis (it's a 10 mile hike round trip from where I live). Thus, after removing all non-Company related legal files from my office, I had no control over my office nor access to it. Yet despite this I believe someone may have been placing mail in that office and then someone else may have been removing or may have removed it during the transition period (this is speculation – no one can tell me what happened to the correspondence).

COMPANY CONTROL OF MAIL DURING MY ABSENCE

Bear in mind, the Company and I had the same mailing address. This did not cause a problem prior to my suspension and the concomitant Company staff resignations, because I was diligent about protecting my mail. But afterward it did.

As stated, after my suspension and into the early fall of 2013, I could not come into my office everyday because I was not getting paid and had no transportation. It is my belief that during the days I was

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absent the Company collected all of the mail, including mail addressed to me. I saw some of the mail they collected (if I was in that day, it would go directly to me), but apparently not all of it. Most of what I received after my suspension can be classified as "junk" mail, which is the kind of mail I expected since I had no clients other than the Company. Any mail addressed to me that had any legal consequence would have been mail that also concerned the Company. Its my belief that some of it may have gone directly to company personnel and the rest was piled somewhere. I have not been able to ascertain what happened to the missing parcel, so that is all speculation. And since the Company operations were so understaffed and frankly disorganized, no one has ever provided me with an answer.

That said, any failure by me to communicate with the Company any important notices that might have come by mail, or to keep the Company reasonably informed of information that would have come by mail, would have been directly caused by the Company's misplacement of the correspondence that would have contained that information. Now AGAIN, I do not contend that the Company deliberately misplaced this correspondence, but I think it was the accidental by-product of two things: the severe understaffing of the Company which caused a breakdown in the regular mail distribution system, and the fact that someone else was assigned my office, which introduced a transition element. Because of those circumstances, I think that the correspondence meant for me may have gotten lost, accidentally misplaced, or accidentally removed. (Note: indeed, several weeks ago I found some of the missing correspondence in the back of a Company storage room in a bank box randomly marked "Ty's Office"). Frankly, the Company had a sort of "get Ty's stuff out of here" attitude.

MOTION FOR WITHDRAWAL IN AUGUST OF 2013

As mentioned, after the Company failed to have me removed as counsel in the Araujo matter (despite several requests by me), I finally had to file a Motion for Withdrawal as counsel in August of 2013. On the date of filing, I served a copy of my motion on the Plaintiff by US Mail.

I did not want to file the motion without having a replacement to fill my spot, but by August I felt I had waited as long as I could and that I could not wait any longer. Since I had never filed such a motion before, I was unaware of the procedure, and erroneously believed I had successfully removed myself by the act of filing the motion (I did not know I also had to draft the Order). Nevertheless, at the very least I believed that the motion itself – which stated that I was ineligible to practice law – put both the Court and the Plaintiff on notice that I could not serve as counsel for the Company. Therefore I expected that any subsequent correspondence in the Araujo matter would be directed to the Company, not me.

Yet despite having notice that I could no longer practice law and therefore could not serve as counsel for the company, Plaintiff's counsel, Attorney Winston Ostrow, continued to send mail to my attention, including his motion to compel discovery. Had he redirected the mail to the Company instead of sending it to me, none of it would have been lost by the Company, and the Company would have had notice of the motion to compel discovery. On the other hand, had the Company replaced me in when I asked them to back in June, it would have alleviated any confusion as to who represented the Company and would also have prevented any alleged "misconduct" on my part.

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ADDITIONAL FACTS

In retrospect, I admit I should have been more persistent in my demand that the Company replace me as counsel immediately after my suspension, and I should have insisted that the Company follow through on my request that it produce the documents for discovery. However, in this regard I must note that the Company owner, who basically has all executive and financial power reserved for himself, is a difficult man to communicate with. Though he is a friend of my father and me, he can be *extremely* abusive, and he is dangerously cocksure when it comes to legal matters. Therefore, though he hears everything I advise him of, he tends not to listen to me or react well when I present him with bad news, and he tends to ignore my legal advice and requests when neither interests him. He also tends to break his promises and make counter-factual statements. As a result, he is an extremely difficult person to effectively communicate with or manage from a legal perspective. Though I did my level best on both counts, I am certain that in his mind replacing me on the Araujo matter or complying with my requests for the documents was low priority compared to the raising of funds and the other tasks that go along with keeping the start-up going.

Making matters even more difficult for me, my fee payments were always based upon his whims. I think that made me more timid than I should have been. I want it noted, however, that I had no issues with any of the other "outside" clients I handled during the time period, chiefly because all of them respected my judgment and complied with my advice and requests.

With all that said, I still believe I kept Mr Van Den Heuvel and the Company as informed as I could, and I also think I fulfilled all of my ethical duties to the best of my ability given the circumstances placed upon me by the Company.

SUMMARY

In short, I do not believe I committed misconduct because:

1. I was a quasi "contracted in-house counsel" for the Company. I was allowed to pick up outside clients, but most of my time was spent providing legal services to the Company;
2. As such, my office was inside the Company office building and under the Company's control;
3. Accordingly, my mailing address was the same as the Company's address and any correspondence addressed to me went through Company mail distribution channels. After a mass resignation of Company personnel in June of 2013, those channels became far less scattered and unreliable;
4. The Company knew I was suspended in June of 2013 and knew I could no longer represent it in any on-going matters, and yet took no action to fulfill my repeated requests to hire replacement counsel in the Araujo matter until January of 2014 (admittedly because of lack of money -- but please note I was not being paid);
5. The Company also defaulted on payment of my fees, making it difficult for me to afford to come in to the office on a daily basis and to strictly monitor any correspondence on a daily basis as I normally did when I was actually practicing law. In my absence, the Company had total control of my correspondence, including all of the correspondence that went missing.

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6. The Company also stripped me of my office after my suspension and removed some of my things from that office without my consent. In doing so, I assume the Company caused the removal and misplacement of crucial Araujo correspondence that may have been deposited there. To support this theory, I recently found a box of my things tucked away in a storage room and, and that box contained at least one piece of missing Araujo correspondence.
7. On top of all that, I withdrew myself as counsel by motion filed in August of 2013, *before Plaintiff filed its paperwork for the missed Motion to Compel hearing*. Though my attempted withdrawal was technically unsound (I did not realize I also had to draft the Court Order myself), the information contained in my Motion should have put Plaintiff's counsel on notice that I was ineligible to practice law, and that knowledge should have halted any further correspondence to me from them. Had that occurred, there would have been no issue of misconduct, because – as stated above – all correspondence related to the missed Motion to Compel hearing was sent out *after* I had filed my Motion to Withdraw.

YOUR SPECIFIC QUESTIONS

1. **The Araujo Scheduling Conference** – After my suspension, as I outlined above, I continued to work for the Green Box Company, writing correspondence and doing administrative tasks (I did not work for Mr. Van Den Heuvel personally, though as I noted he ran the company). For most of time the staff consisted of just myself, Van Den Heuvel and one other gentlemen. The other Company personnel always become nervous about anything that has to do with legal matters. Mr Van Den Heuvel was not present, so Mr Reinhart – the other Company personnel – asked me to handle the scheduling call. I was extremely wary about doing so, but I agreed to take the call for two reasons. One, I had already informed the court that I was ineligible to practice law, so I believed that if it was inappropriate for me to participate, the Court or Attorney Ostrow would have told me so. Both parties were aware before and during the call that my license was in suspension. Second, I was fairly certain that participating in a Scheduling Conference did not constitute the practice of law (the conference came on me so fast I did not have a chance to research the issue) but I distinctly remembered occasions where secretaries and paralegals had participated. Subsequently I have been informed by both Attorney John Petitjean and Attorney Mark _____ that participating in a scheduling conference DOES NOT constitute practicing law.

Nevertheless, because of all the confusion that occurred as a result of my participation, I sincerely wish I had not done so. I believe I may have unintentionally misled Attorney Ostrow during the conference (because the Company had no money, I believed that as soon as I restored my license I would have to resume representation – but I believe I made it sound like this would happen quite quickly, which I did not mean to convey). Again, if I could do it over, I would never have agreed to take the Scheduling Conference call.

2. **THE QUESTION OF NOTIFICATION.** I did not provide the Company with certified notification of my suspension by mail, because as I said, they knew of my status immediately and it would not

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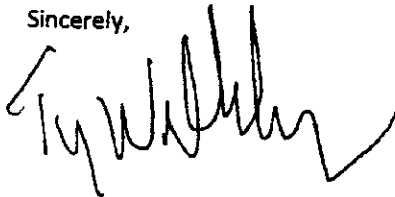
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have made practical sense because I worked in the same office and I saw them all day every day and thus sending them a letter would have seemed silly.

3. As for the November 1st, 2013, as I outlined above, THAT particular "added" suspension stunned me, because I provided the client with all of the State Bar Fee paperwork (including the Trust waiver), and the client told me "we will take care of that" and THEN ACTUALLY TOLD ME THEY DID TAKE CARE OF PAYING MY STATE BAR FEES WHEN IN FACT I GUESS THEY DIDN'T. What's so bizarre is that the Company bookkeeper (Mr Van Den Heuvel's wife) went so far as to make up a phony conversation between herself and a State Bar customer service person (she actually told me State Bar customer service person asked her "whether (I was) taking classes" – which I should have immediately been suspicious of because there would have been no reason for such a question, but I never would have dreamed anyone would go so far as to make up a conversation just to deceive me in to thinking the fees had been paid when they weren't). Thusly, the Company knew in October (when it said it told me it "took care" of the State Bar Fees) that if those fees were not paid by November 1st, 2013, my license would be "doubly" suspended on that date. So by deliberately pulling their lame deception, they knew they were going to get me another suspension. Moreover, as soon as I found out my name was on the roll call for State Bar Fee suspensions, I went ballistic and wanted answers. (To this day, no one has given me any and I have no idea why she told me she paid my fees when she did not. Obviously, she had to know the ruse would never work in the long run).
4. **DID I PROVIDE NOTICE TO PLAINTIFF'S COUNSEL IN JUNE?** No, I did not provide Plaintiff's attorney with notification of my suspension until I served upon them my Motion for Withdrawal on August 15. At that time, I clearly stated that I was withdrawing because of the June 5 suspension left me ineligible to practice law.
5. **DID I TRY TO CONVINCE THEM TO PROVIDE ALTERNATE COUNSEL?** As I stated above, I begged them to do so. Had they done so when I asked, I would not be in this precarious position.
6. **WHAT HAVE I DONE TO CLEAR THE SUSPENSIONS?** I have taken all classes needed and have turned in my CLE Petition along with the \$200.00. When and if my Petition is granted, I will subsequently raise the necessary moneys to also clear the State Bar Fee Suspension, and I will provide any missing paperwork necessary as well.
7. I covered the mail issue above.
8. I did not perform any legal work for Mr. Van Den Heuvel after my suspension. I performed only administrative and writing tasks.

I WILL BE SUPPLEMENTING MY ANSWERS AND PROVIDING THE REQUESTED DOCUMENTATION IN THE DAYS TO COME, BUT WANT TO GET THIS IN NOW

Sincerely,

A handwritten signature in black ink, appearing to read 'Ty Willihnganz', written over the word 'Sincerely,'.

Ty Willihnganz
State Bar ID # 1026693
1551 Silverstone Trail; Suite 8
De Pere, WI 54115

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**Attorney Ty Willihnganz
Stonehill Law Office
2107 American Boulevard De Pere, WI 54115
(920) 264-0228**

May 28, 2014

COPY

Honorable Donald Zuidmulder
Branch I
Brown County Courthouse
Green Bay, WI 54301

RE: Araujo v. Ronald Van Den Heuvel and Green Box NA Green Bay, LLC; Brown County Case
No. 13 CV 463 / MOTION TO QUASH THE SUBPOENA

Your Honor:


I have been subpoenaed by the Plaintiff in the above encaptioned matter to appear in your courtroom and provide testimony on May 30, 2014 at 10:00 am. I will not be honoring that subpoena.

Attached hereto, please find my motion asking this Court to quash the subpoena, my arguments in support of the same, and the draft of an Order providing the same. I would ask that this Court immediately sign the Order and return it to me so that I may distribute it to all interested parties. I would further ask that prior to the issuance of any subsequent subpoena of a like kind, a Briefing Schedule be established and a Hearing Date set so that the issue of whether I may be compelled to testify under Wisconsin law can be argued and decided by this Court.

Please be advised that this matter involves a principal I take very seriously. If relief is not provided by this Court I will consider appealing my motion to whatever authority I must, and then incurring whatever sanctions, including confinement, are doled out. I have done my utmost to cooperate in this matter, but enough is enough. I cannot have clients thinking I will take the witness stand against them without putting up a fight.

Thank you for your immediate attention. I can be reached at the above listed phone number or on my mobile phone at (920) 265-2165.

Sincerely,


Ty Willihnganz
Attorney and Counselor at Law

