

CV05-00899
IN THE MATTER OF:
District Court
Washoe County
NVC
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RONALD A. LONGTIN, JR.

BY *A. Simpson*
DEPUTY

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE BRENT ADAMS, DISTRICT JUDGE

---o0o---

IN THE MATTER OF:
DRAKE HOLDING CORPORATION,) Case No. CV05-00899
)
) Dept. No. 6
)
) TRANSCRIPT OF PROCEEDINGS
)

ORDER TO SHOW CAUSE
AUGUST 31, 2005, RENO, NEVADA

APPEARANCES:

For The Respondent DEMETRAS, O'NEILL & OTTO
Drake Holding: By: David J. Otto, Esq.
By: Shelly O'Neill, Esq.
232 Court Street
Reno, Nevada 89501

For the Applicant: JOHN S. BARTLETT, ESQ.
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Reported by: JULIE ANN KERNAN, CCR #427, CP, RPR
Computer-Aided Transcription

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1 RENO, NEVADA; FRIDAY, AUGUST 31, 2005; 11:00 A.M.

2 ---o0o---

3
4 THE COURT: This proceeding is in case
5 CV05-00899 in the matter of Drake Holding Corporation.
6 This is the time set for the hearing on the motion for
7 order to show cause. And counsel for the movant, you
8 may proceed.

9 MR. OTTO: Good morning, your Honor.

10 THE COURT: Good morning, Mr. Otto.

11 MR. OTTO: I'm going to try to make like so --
12 make my Z and get out of here without wasting the
13 Court's time. And in that regard, I have several
14 documents which have been stipulated by the opponent's
15 attorney, Mr. Bartlett.

16 THE COURT: All right. Thank you. Is that
17 correct, Mr. Bartlett?

18 MR. BARTLETT: That's correct, your Honor.

19 THE COURT: All right. They are admitted and
20 they'll be collectively identified as Exhibit 1 to this
21 proceeding.

22 MR. OTTO: I've premarked them, but Ms. Clerk
23 could please remark them. For the record, the first one
24 is going to be marked Exhibit 1. It's guilty plea

1 memorandum for -- they're all 1 as the stipulated
2 documents.

3 MR. BARTLETT: Could you go over them again
4 because you gave me three documents and I want to make
5 sure --

6 THE COURT: If it's easier to separately mark
7 them, we'll do that.

8 MR. OTTO: I would prefer.

9 THE COURT: Number 1 is the guilty plea
10 memorandum.

11 MR. OTTO: Guilty plea memorandum of Peter
12 Berney, defendant in a federal case for conspiracy to
13 sell securities, fraudulent securities.

14 THE COURT: Okay.

15 MR. OTTO: The next one is an invoice from
16 Western States Transfer and Registrar. 3 is a stock
17 transfer agent and it contains the list of active
18 stockholders in Drake Holding's corporation as of
19 January 30th, 2004. The other is a --

20 MR. BARTLETT: Excuse me, your Honor.
21 According to my documents it says stock as of May 12th,
22 2005.

23 MR. OTTO: Actually, there's two documents.
24 One is from the Western States Transfer. The other is a

1 document without a fax cover page which is actually a
2 fax, says May 19th, but I believe he's right, as of May
3 12th.

4 THE COURT: So that will be Exhibit 3.

5 COURT CLERK: Correct.

6 MR. BARTLETT: That's just one document. Do
7 you have the right --

8 MR. OTTO: Mr. Bartlett, I showed you this one
9 first, then the important part is the coversheet on the
10 Western States Transfer agent.

11 MR. BARTLETT: Do I have that?

12 MR. OTTO: I should have given you a copy.
13 There it is.

14 THE COURT: So Exhibit 2 is the list of active
15 stockholders as of January 30th, 2004, and Exhibit 3 is
16 a list of stockholders as of May of 2005?

17 MR. OTTO: May 12th of 2005, yes.

18 THE COURT: May 12th, 2005. Thank you.

19 MR. OTTO: And then the next is, actually,
20 three separate applications for appointment of
21 custodians in three separate corporations. And they
22 could be labeled next in order; 4, 5 and 6, or 4A, B, C.
23 4, 5 and 6, and they are -- 4 will be in the matter of
24 Sunpace Asia, Peter Berney, applicant, Mr. John Bartlett

1 as attorney. The next is a Corene Dion, applicant.

2 Next, Jen Networks, Inc., John Bartlett as attorney, all

3 in the First Judicial District. The next is Icon

4 Systems, Inc., Peter Berney as applicant, John Bartlett

5 as attorney. There was one more.

6 MR. BARTLETT: So I've got --

7 MR. OTTO: Ms. Clerk, what number are we on

8 now?

9 COURT CLERK: 7 will be the next number,

10 counsel.

11 MR. OTTO: And the next in order, number 7 is

12 a letter dated August 12th, 2005, from David E. Child,

13 addressing the matter before the Court today. And it is

14 sent from an office at 350 Kachina Circle, Las Vegas,

15 Nevada.

16 THE COURT: Exhibit 1 through 7 are admitted.

17 You may proceed.

18 (Exhibits 1 through 7 are marked and admitted
19 into evidence.)

20 MR. OTTO: Thank you, your Honor.

21 MR. BARTLETT: Your Honor, before we get
22 started, as you can see, I've got a raft of documents
23 here, as well as five opinions of witnesses, and we only
24 have an hour scheduled for this hearing. How do you

1 want to -- I don't know how long they're gonna take.

2 THE COURT: We're not going to take any time
3 at all in the courtroom to mark exhibits. If we take a
4 recess those will be marked during the recess. I assume
5 that all documents will be stipulated to. If there's a
6 good faith basis to object based on the authenticity of
7 the document or relevancy grounds, counsel will state
8 those objections briefly to me and we'll just proceed as
9 we can.

10 MR. OTTO: Your Honor --

11 THE COURT: I should tell everyone I've read
12 all the pleadings, the affidavits in the case, any
13 exhibits to the memoranda and familiarized myself with
14 corporate statute so we don't have to review every bit
15 of information. Go ahead.

16 MR. OTTO: To get right to the heart of the
17 matter, I think it's simplest to say that the corporate
18 statutes of Nevada are not intended to assist the
19 raiding of ongoing corporations with management in
20 place. There are provisions within the Secretary of
21 State statutes, and most contained in 78, et seq, and
22 within the Secretary of State's regulations for causing
23 a corporation to be disqualified from doing business, et
24 cetera.

1 The other thing is I believe this Court
2 expects the litigants before it, the applicants before
3 this in custodianship matters to obey its orders. The
4 Court fashions orders in a particular way for a
5 particular reason, and not less so in this case or in
6 any commercial case.

7 In this case, the Court's order provided that
8 Mr. McBride was named custodian based on the fact that
9 he represented he owned some stock in Drake Holdings.
10 It also provided that he was named custodian based on
11 the fact that he was unable to reach corporate
12 management. It also provided that before he take any
13 action, that he hold a shareholder meeting. This, he
14 did not do. He did not notice the shareholders, he did
15 not have a shareholder meeting. Instead, alterveras
16 order and alterveras of the corporate Chapter 22 did a
17 reverse two to one stock split and issued a hundred
18 million shares in Drake Holdings. Drake Holdings out of
19 treasury was only authorized to issue 50,000 -- I'm
20 sorry, 50 million shares, unless -- unless the
21 stockholders, shareholders voted to issue more. This,
22 he did not do. For that reason alone, I would ask the
23 Court, because we now have corporate management of Drake
24 Holdings here in the courtroom, the intent of the

1 statutes, perhaps it might be said, is to wake up the
2 corporate management who may have lapsed in notifying,
3 in paying their fees at the Secretary of State, in
4 providing a list of officers. Certainly this case has
5 woken up the corporate management. I have the CEO and
6 major shareholder here today, Mr. Joe Dilillo. He can
7 testify about the corporation and about what happened in
8 this case. They're here. There is no need for a
9 custodian. There has been no proof adequate before this
10 Court to show that Mr. McBride even owns stock or bought
11 stock on the pink sheets. If he did buy stock, he
12 bought a minor portion of the outstanding stock in Drake
13 Holdings.

14 THE COURT: Let's take this one by one. Do
15 you or do you not contest whether Mr. McBride at the
16 time he applied to the Court for custodian relief was a
17 shareholder of the corporation?

18 MR. OTTO: I contest. I have no proof before
19 me that he was a shareholder of the corporation.

20 THE COURT: All right. And then you're
21 representing that it is the case that there was no
22 shareholder meeting prior to reverse document submitted
23 and stock and notice.

24 MR. OTTO: There was notice to the existing

1 stockholders and there was no stockholder meeting held
2 before the reverse stock split or the alterveras
3 issuance of a hundred million shares of stock.

4 THE COURT: Why don't you proceed to call any
5 witnesses you have on the subject.

6 MR. OTTO: Call Mr. Joe Dilillo, please.
7 Actually, I'd like to call Frank Senerchia.

8 THE COURT: Mr. Senerchia, please step
9 forward, face the clerk, and be sworn as a witness.

10
11 FRANK SENERCHIA,

12 called as a witness by the Appellant herein;
13 being first duly sworn, was examined and
14 testified as follows:

15
16 THE COURT: Please take the witness stand and
17 be seated.

18 THE WITNESS: Thank you, your Honor.

19 DIRECT EXAMINATION

20 BY MR. OTTO:

21 Q Mr. Senerchia, please state your name and
22 spell it for the record.

23 A My name is Frank Senerchia. It's spelled
24 S-e-n-e-r-c-h-i-a.

1 Q And what is your occupation, sir?

2 A I'm a licensed private investigator, the
3 state of New York.

4 Q And where are your offices?

5 A At 505th Avenue in Manhattan, New York.

6 Q New York City?

7 A Yes, sir.

8 Q And are you familiar with this case?

9 A Yes, I am.

10 Q And how did you come to be familiar with this
11 case?

12 A Hum, I began working this case approximately
13 two years ago. I worked for an attorney named Maranda
14 Fritz, who represents a client, Herbert Jacobi. I'm
15 sorry.

16 Q What transpired between you and Ms. Fritz
17 that caused you to become involved in an investigation
18 into this case?

19 A I believe it was early July I received a call
20 from Maranda that she wanted to talk to me. We sat down
21 and she had explained to me that she wanted to conduct
22 an undercover operation into what she believed was the
23 illegal sale of shell companies by Peter Berney.

24 Q All right. I have two questions springing

1 from that statement. Could you please explain to the
2 Court what a shell company is?

3 A It's a -- it's a public company. I am not
4 too familiar with shell companies, but it's a public
5 company that an individual can purchase to, I believe,
6 get stock symbols and be able to trade shares of stock.

7 Q Publicly traded?

8 A Yes, sir.

9 THE COURT: I assume shell means it's not
10 actively engaged in business.

11 THE WITNESS: Yes, sir, I believe so. Yes,
12 your Honor.

13 BY MR. OTTO:

14 Q Did there come a time when you began an
15 undercover investigation into this case?

16 A Yes. That's correct.

17 Q And what were the -- what were the parameters
18 or the methods involved in that undercover
19 investigation?

20 A Ms. Fritz thought that a female investigator,
21 someone that would be able to play the part of an
22 attorney, would be sufficient in this role.

23 Q And did you come to hire a person to be an
24 undercover investigator posing as an attorney?

1 A Yes, I did.

2 Q And what did -- what did that person -- what
3 did you direct to that person to do?

4 A Contact was made by Mr. Berney who was
5 selling these shells.

6 Q And that would be Peter Berney?

7 A Yes, that's correct.

8 Q All right. Contact was made?

9 A Contact was made, yes.

10 Q And then what happened?

11 A Undercover investigator Jane Gordon had
12 telephone contact with Mr. Berney, and then after that,
13 corresponded via e-mail and it got to a point where
14 Mr. Berney invited undercover investigator Gordon to Las
15 Vegas to meet with him personally to expedite the sale
16 of a shell company.

17 Q And do you recall what address in Las Vegas
18 Mr. Berney was operating from?

19 A I believe it's 350 Katrina Circle.

20 Q Is it Kachina Circle?

21 A Kachina.

22 Q To your knowledge, is Mr. Berney connected
23 with Mr. R.K. McBride?

24 A Yes.

1 Q What information do you have in that regard?

2 A I personally interviewed Mr. McBride, it was
3 sometime this year, in regards to the case involving
4 Mr. Jacobi. He had -- Mr. McBride was named as officers
5 of various corporations that Mr. Berney controlled.

6 Q And are you aware of what business address
7 Mr. McBride operates from?

8 A No, I do not. I'm sorry.

9 Q And are you aware that Mr. Berney is under
10 indictment and, in fact, has pled guilty pending
11 sentencing in a federal case of conspiracy to sell
12 fraudulent securities?

13 A Yes, sir.

14 MR. OTTO: I have nothing further at this
15 time.

16 THE COURT: Thank you. Mr. Bartlett.

17 CROSS-EXAMINATION

18 BY MR. BARTLETT:

19 Q How do you pronounce your name again?

20 A Senerchia.

21 Q Senerchia. Mr. Senerchia, your testimony is
22 you were hired by Maranda Fritz to conduct an undercover
23 investigation as to whether Mr. Berney was making
24 illegal stock sales. Is that --

1 A Not accurate. Selling shell corporations.

2 Q Is it illegal to sell a shell corporation?

3 A No, sir, I don't believe that's accurate.

4 Q So you were hired to see if he was engaging
5 in any activities that were illegal.

6 A Hum, I was engaged to go ahead and find out
7 exactly what Peter Berney was selling and what he was
8 telling to people as far as the shell company, how much
9 he was charging for the company and so forth.

10 Q Okay. And you agree with Judge Adams'
11 indication that shell companies, essentially, are not

12 doing business, they're just an existing entity.

13 A I believe that they are -- yes, I believe
14 that's correct, sir.

15 Q Okay. So if Mr. Berney is representing a
16 company selling shell corporations, or offering them as
17 potential merger partner which is another way to do it,
18 is it not?

19 A I'm sorry, can you --

20 Q Offering the shell companies as a potential
21 merger partner with a private company?

22 A Yes, sir, from what I'm told.

23 Q All right. Do you have any -- you don't have
24 any personal knowledge of this type of business

1 organization --

2 A No, sir.

3 Q -- transaction? Okay. And who is Jane

4 Gordon?

5 A Jane Gordon is an investigator that works for
6 my company, O'Ryan Investigations.

7 Q And you had her pose as an attorney for who?

8 A The individual's name I'm not sure of, sir,

9 but he was an individual that knew Mr. Berney was

10 selling shells in Las Vegas.

11 Q How did he become involved?

12 A I don't know much about that, sir.

13 Q Okay. And you don't know the person's name?

14 A No, sir.

15 Q Are you aware that Mr. Berney is -- is

16 supposed to testify in a future trial of Mr. Jacobi?

17 A I believe that's accurate, yes, sir.

18 Q Now, and how about Mr. McBride?

19 A I'm sorry, sir.

20 Q Do you know whether he's slated to testify at

21 this trial, Mr. Jacobi?

22 A When I spoke to Mr. McBride he had told me

23 that he had received a subpoena. I don't know if he's

24 needed to testify in that case.

1 Q So is it safe to say that you were hired to
2 try to find negative information about Mr. Berney that
3 would assist Ms. Fritz in her defense of Mr. Jacobi?

4 A As a private investigator, sir, I go
5 throughout and I develop information.

6 Q I take that as a yes. Now, did you make any
7 kind of a report to Ms. Fritz as a result of your
8 investigation?

9 A No, sir.

10 Q You haven't at this point in time?

11 A No, sir.

12 Q Do you intend to in the future?

13 A No, sir.

14 Q Has she requested?

15 A Unless she requests it, I have not prepared a
16 report on this, no, sir.

17 Q And you haven't had any conversations with
18 her about what you found today?

19 A Oh, yes, sir.

20 Q Okay. So you have been telling her what
21 you've been finding orally.

22 A Yes, sir.

23 Q All right. Now, this attorney -- this Jane
24 Gordon that you hired or used to pose as an attorney,

1 she made contact with Mr. Berney; is that correct,
2 initially?

3 A Yes, sir.

4 Q Okay. So she solicited information about
5 what Mr. Berney was selling as the initial contact.

6 A Yes, sir.

7 Q Okay. And Mr. Berney responded as to what he
8 was selling, correct?

9 A Yes.

10 Q Did you ever speak to Mr. Dilillo?

11 A Yes, sir.

12 Q And what was the occasion for speaking to
13 him? When did you speak with him?

14 A I spoke to him last night and I spoke to him
15 this morning, sir.

16 Q That was the first time?

17 A Yes, sir.

18 Q All right. Do you know if Maranda Fritz
19 spoke to Mr. Dilillo?

20 A I believe she did, sir.

21 Q Okay. Do you know when or under what
22 circumstances?

23 A I know it was sometime in July of this year.

24 MR. BARTLETT: No further questions.

1 THE COURT: Thank you. Mr. Otto.

2 MR. OTTO: Yes.

3 REDIRECT EXAMINATION

4 BY MR. OTTO:

5 Q Sir, when your undercover agent spoke to
6 Mr. Berney in Las Vegas, was part of what he was selling
7 as shell corporations, did it include Drake Holdings?

8 A Most definitely, yes.

9 Q So I just want to reiterate so everybody
10 hears it. Mr. Berney, you have testified, was selling
11 Drake Holdings as a shell corporation to your undercover
12 agent?

13 A That is correct.

14 MR. OTTO: Thank you very much.

15 THE COURT: All right. Thank you. You are
16 excused. Please call the next witness.

17 THE COURT: Thank you, your Honor.

18 MR. OTTO: My next witness, your Honor, is
19 Mr. Joe Dilillo.

20 THE COURT: Mr. Dilillo, please step forward,
21 raise your right hand, be sworn as a witness.

22 / / /

23 / / /

24 / / /

1 JOSEPH DILILLO,

2 called as a witness by the Appellant herein,
3 being first duly sworn, was examined and
4 testified as follows:

5 THE COURT: Please take the witness stand, be
6 seated.

8 DIRECT EXAMINATION

9 BY MR. OTTO:

10 Q Mr. Dilillo, could you please state your full
11 name and spell it for the record?

12 A Joseph Dilillo, D-i-l-i-l-l-o.

13 Q And what is your occupation, sir?

14 A I'm a money management investment counselor.

15 Q Investment counselor --

16 THE COURT: Mr. Dilillo, the sound system in
17 the courtroom isn't working today so please try to do
18 your best to speak up.

19 THE WITNESS: Okay.

20 THE COURT: Go ahead.

21 BY MR. OTTO:

22 Q And what is your relationship to Drake
23 Holdings Corporation?

24 A I'm the chairman of the board.

1 Q And are you a shareholder?

2 A Yes.

3 Q And how long have you been involved with
4 Drake Holdings Corporation?

5 A Fourteen years.

6 Q And over the course of 14 years, have you
7 generally kept up the required information and fees sent
8 to the Nevada Secretary of State?

9 A For 14 years, yes.

10 Q And did there come a time when it lapsed for
11 a while?

12 A About two years ago.

13 Q Okay. I'm going to show you what's been
14 marked as Exhibit 2 and 3 as stipulated into evidence.
15 The first one is Exhibit 2, sir, and I'm going to ask
16 you if you recognize that document?

17 A Yes.

18 Q And what is it?

19 A It's a shareholder list sent by the -- our
20 transfer agent.

21 Q What was the date that was sent by the
22 transfer agent?

23 A This was -- looks like January or March of
24 2004.

1 Q And what is the address contained on the
2 cover sheet there?

3 A Drake Holding Corporation, Post Office Box
4 933, Malibu, California, 90265.

5 Q That is the current address of Drake Holdings
6 Corporation?

7 A Yes.

8 Q To your knowledge, did Drake Holdings
9 Corporation at that address ever receive notices that it
10 had lapsed at the Nevada Secretary of State's office?

11 A No.

12 Q Did there come a time -- was there a prior
13 address?

14 A Yes.

15 Q And where was that address?

16 A Santa Monica. Fourth Street, Santa Monica,
17 California.

18 Q And when did that address change?

19 A Mid 2001.

20 Q And did you notify the postmaster in Santa
21 Monica that you had changed addresses?

22 A Our CFO did.

23 Q All right. I'm showing you now what has been
24 marked and admitted as Exhibit 3. And I would ask you

1 to look at page 2 of that document at the top, under
2 your name, sir. And what -- is that -- do you recognize
3 that address?

4 A Yes. That's where I live.

5 Q Is that your home address.

6 A That's my home.

7 Q And how long has that been your home address?

8 A 22, 23 years.

9 Q And are you a shareholder of Drake Holdings
10 Corporation?

11 A Yes.

12 Q And what percentage, approximately, of shares
13 in Drake Holdings did you own, to the best of your
14 knowledge, until today?

15 A Well --

16 Q Not counting any alterveras activity by the
17 custodian.

18 A I own over 2.5 million shares which
19 translates to 32 percent.

20 Q About a third of the corporation?

21 A About a third of the corporation.

22 Q And as a shareholder, did you ever receive
23 notice at your address of a shareholder's meeting to
24 change the name of your corporation, to do a two for one

1 THE DEFENDANT: Yes, sir.

2 THE COURT: What is that?

3 THE WITNESS: Ultimate Cigar, not worth a
4 darn.

5 THE COURT: Okay. Why on earth did you get
6 into the business of being the custodian of a company?

7 THE WITNESS: I thought it was a good avenue
8 to broaden something I could do in my later years when I
9 no longer could do construction because -- well --

10 THE COURT: Okay. Whatever.

11 BY MR. OTTO:

12 Q Mr. McBride -- oh, let's start backwards.

13 You just testified that you were never appointed

14 custodian of another corporation. Is that true?

15 A That's true.

16 Q Have you ever applied to be custodian of
17 other corporations?

18 A No.

19 Q Are you on an application for an appointment
20 of R.K. McBride as custodian of America's Shopping Mall,
21 Incorporated, filed in the First Judicial Court of our
22 state?

23 A Have I -- as I understand, it's not went
24 through.

1 Q But you did apply, sir?

2 A Yes, sir.

3 Q So you testified incorrectly when you said
4 you didn't apply.

5 A I didn't say I didn't apply, did I?

6 THE COURT: That's what you said.

7 THE WITNESS: I'm sorry, I was incorrect
8 there. I evidently have applied, but I have not been --

9 THE COURT: Would you remember if you applied
10 or not? Does that name sound familiar to you?

11 THE WITNESS: Yes, sir, it does.

12 THE COURT: Did you apply?

13 THE WITNESS: Yes, sir.

14 THE COURT: How many times have you applied?

15 THE WITNESS: I'm not sure.

16 THE COURT: What is that -- you mean you have
17 applied so many times you don't remember or --

18 THE WITNESS: No, sir.

19 THE COURT: What do you mean?

20 THE WITNESS: I can't come up with a definite
21 figure.

22 THE COURT: Could it be ten?

23 THE WITNESS: No. No, sir. No, sir.

24 THE COURT: Could it be five?

1 reverse stock split, and to issue hundred million shares
2 out of the treasury?

3 A No.

4 Q You never received notice of that, sir?

5 A No, sir.

6 THE COURT: When was the last shareholder's
7 meeting you received notice of, Mr. Dilillo?

8 THE WITNESS: The last shareholder's meeting
9 was, I would say, approximately four years ago.

10 THE COURT: What is the business of the
11 company?

12 THE WITNESS: In 1984, my partner and I
13 established a brokerage house in Los Angeles. We were
14 wholesale brokers, in other words, we were market
15 makers, as well as having clients. And over these
16 ensuing decades that brokerage house grew to the point
17 where we had 95 people, generated 15, 16 million in
18 revenue, and we established other subsidiaries; Drake
19 Energy, Drake Strategic. We put all of this, the entire
20 operation into a holding company in 1988 and we
21 established the name Drake Holding to hold all these
22 entities.

23 In 1998 we sold the brokerage firm, the
24 advisory, and several other things. And since that time

1 we've been looking for a viable public company to put
2 into the Drake Holding Corporation, so we're -- I guess
3 you could say that Drake Holding is an investment
4 company looking for investment. And we have looked at
5 many.

6 THE COURT: Drake Holding today is dormant in
7 the sense that it does not conduct an active business;
8 is that right?

9 THE WITNESS: Well, we've looking at over 25,
10 26 business plans. We pay our bills. And we have the
11 office, go to the office every day.

12 THE COURT: When you say viable, I'm not quite
13 sure what that is. Well, what I mean is you're not
14 operating a brokerage house or --

15 THE WITNESS: No, we sold it.

16 THE COURT: -- any other kind of business.
17 You are looking for a business to do something with, to
18 buy or to do what, what is it you're looking for?

19 THE WITNESS: Well, we're looking for a
20 private company that wants to be public to come into our
21 shell, into our company, and then run -- help to run
22 that business.

23 THE COURT: Now, did you happen to read the
24 memorandum of Mr. Bartlett? It was just filed

1 yesterday. Did you read it?

2 THE WITNESS: I saw it today, I think.

3 MR. OTTO: I don't believe -- it came in as we
4 were discussing the case this morning.

5 THE COURT: Okay. Generally, as I understand
6 it, the thesis of what McBride and/or Mr. Berney are
7 trying to do is to find a dormant public company. You
8 find a private company that wants to go public with an
9 active business of some sort. And the -- I don't mean
10 in a pejorative way, but the pitch to the private
11 company would be instead of having to go through all the
12 hoops for registration and securities and all the rest
13 you otherwise have to do, buy our company, you can use
14 its stock, you're already on the stock exchange, you can
15 avoid a number of start-up of legal expenses, so you pay
16 us consideration of X and now you have our company, the
17 shell, which will become a real company, and the only
18 consideration our company gets is whatever you give us
19 to do that. Are you telling me that you and your
20 partner have the same plan in mind for Drake Holding, or
21 are you saying we find a private company, they become
22 public and now Drake is an active company and we're,
23 actually, involved in doing business?

24 THE WITNESS: Our intention was never to just

1 sell Drake Holding Corporation as a public vehicle. Our
2 intention is to find public company that wants to be
3 public and utilize the experience that we have in the
4 securities industry to help them as board members of the
5 new company and to help it grow through our various
6 contacts in the world of business.

7 My partner and I have been in the securities
8 industry for over 35 years each. Our other director is
9 a -- is a CFO of a very large firm in Los Angeles and --
10 and another director has been in the securities business
11 40 years, so we've been through the table in terms of
12 helping a company get exposure as a public company.

13 THE COURT: And you've been -- you've been in
14 this process of finding a private company for about
15 seven years; is that right, since '98?

16 THE WITNESS: Not really. When we sold the
17 brokerage firm and advisory in 19 -- in mid to late '98,
18 there was a period of time, two or three years, where we
19 were just trying to settle down, get things in order,
20 sell off a couple other assets that we had in the
21 company, and we've been actively looking for a private
22 company, viable private company that kind of fits what
23 the general parameters that we have for, I would say,
24 about two and a half, three years, an active search.

1 Like I said, we've looked probably at a minimum, 25
2 business plans, sit down with management, et cetera.

3 THE COURT: Prior to the entry of the
4 custodian order in this case did you receive any inquiry
5 from Mr. McBride?

6 THE WITNESS: No.

7 THE COURT: Did you know who he was?

8 THE WITNESS: No.

9 THE COURT: Did you as chairman of the board
10 receive any evidence of any kind that he had purchased
11 shares of the company?

12 THE WITNESS: No.

13 THE COURT: After the initiation of this
14 lawsuit have you ever received -- think you've already
15 testified you haven't received any notice of any
16 shareholder's meeting or intent for the reverse stock
17 split or any other transactions in the company; is that
18 right?

19 THE WITNESS: None whatsoever.

20 THE COURT: Did you know that the name of the
21 company has been changed?

22 THE WITNESS: We were alerted to that when
23 subsequent to the call from Maranda that this situation
24 was happening, but in a formal way, the firm that I'm

1 with now, we make a market in Drake Holding, and on a
2 Monday afternoon --

3 THE COURT: I don't understand that
4 expression, "we make a market in Drake Holding".

5 THE WITNESS: When you're a public company you
6 can either be listed on New York Stock Exchange,
7 American Stock Exchanges have a specialist which,
8 basically, controls the trading of stock. When you're
9 over-the-counter you have market makers and each market
10 maker is kind of a specialist and that make a bid and
11 ask if a person wants to buy, they pay the offering. If
12 they want to sell, they sell on the bid. And you have a
13 series of market makers that do that for you.

14 THE COURT: I see.

15 MR. OTTO: We had five market makers. Drake
16 Holding had five market makers over the years, four to
17 six market makers, and one of those market makers is the
18 company that I'm with right now.

19 On a Monday afternoon, about two weeks ago,
20 three weeks ago, we received a fax from the pink sheet
21 corporation saying that Drake Holding Corporation will
22 no longer be traded as Drake Holding, it will be
23 Landmere, and here's the new symbol effective tomorrow,
24 effective, you know, the next day.

1 THE COURT: Did you receive any such notice
2 from --

3 THE WITNESS: That was a total shock to us.

4 THE COURT: You didn't receive any such notice
5 from Mr. McBride of that name change?

6 THE WITNESS: No.

7 THE COURT: Since the time Mr. McBride was
8 appointed custodian, and that would be -- let's see.
9 That order was entered --

10 MR. OTTO: The Court's original order on
11 appointing a guardian custodian, your Honor.

12 THE COURT: Here it is. It was entered May
13 11th, 2005. In that order Mr. McBride was appointed
14 custodian to take any actions on behalf of Drake as
15 permitted in NRS 78.347. Since that date and time,
16 other than the filing of the motion in this case, did
17 you receive any notice of any corporate business
18 concerning shares, name change, business plan,
19 marketing, reverse stock split, any business of any kind
20 from Mr. McBride?

21 THE WITNESS: No.

22 THE COURT: Okay. Go ahead.

23 MR. OTTO: I don't believe I have any
24 questions.

1 THE COURT: Do you happen to know whether the
2 other shareholders did or didn't?

3 THE WITNESS: I do know. I do know that 85
4 percent of the shareholders, the shareholders who own 85
5 percent of the stock never received any communication
6 from Mr. McBride or knowledge of the name change,
7 reverse split, et cetera.

8 THE COURT: Okay. Thank you. Mr. Bartlett.

9 MR. BARTLETT: Thank you, your Honor.

10 CROSS-EXAMINATION

11 BY MR. BARTLETT:

12 Q. Mr. Dilillo, you do acknowledge that as of
13 May -- or as of the time Mr. McBride filed his
14 application to be appointed custodian of this
15 corporation, which would be in late April of this year,
16 that Drake Holdings was -- corporate charter had been
17 revoked in the State of Nevada?

18 MR. OTTO: I'm going to object to the
19 question. We have no evidence that the corporate
20 charter was revoked.

21 THE COURT: Do you know --

22 MR. BARTLETT: That's ambiguous.

23 THE COURT: Did you know whether or not it

24 was?

1 THE WITNESS: I did not know.

2 BY MR. BARTLETT:

3 Q You did not know at that time it had been
4 revoked?

5 A I did not know.

6 Q But you subsequently discovered that it was
7 revoked?

8 A I have not discovered that.

9 Q No one has told you that the corporate
10 charter was ever revoked?

11 MR. OTTO: Your Honor, I'm going to object the
12 line of questioning. Mr. Dilillo is not a lawyer and
13 calls for a legal conclusion as to the status of a
14 corporation within the Secretary of State. If there's
15 evidence that the corporation was revoked --

16 THE COURT: He's answered the question. He
17 doesn't know if it was revoked. Next question. The
18 last question was did anybody tell you it was revoked?
19 Other than, of course, communications with counsel, has
20 anybody told you it was revoked?

21 THE WITNESS: No.

22 THE COURT: Next question.

23 BY MR. BARTLETT:

24 Q Do you know if your charter's revoked as of

1 today?

2 A I don't know.

3 Q Who at your corporation is in charge of
4 keeping the corporate charter current?

5 A Our CFO and our bookkeeper paid the fees to,
6 I think the company's called CT Associates, as agent in
7 Nevada, and these fees were paid for 13, 14 years, and
8 in our move of change of address, the CT never -- we
9 didn't get the bill from CT and, apparently, those fees
10 were not paid for several years, a couple years, two,
11 three years, but to answer your question, our bookkeeper
12 and CFO are, basically, in charge of that.

13 Q What are their names?

14 A Our CFO is also a director, Mark Tipton.

15 Q Okay.

16 A T-i-p-t-o-n.

17 Q Okay. And he's the bookkeeper also?

18 A No. The bookkeeper is Millie Altieri.

19 Q And is Millie an employee of Drake Holdings?

20 A She is -- we pay her by the hour.

21 Q But is she an employee of Drake Holdings
22 Corporation?

23 A Current -- well, we pay her by the hour. I
24 guess she's --

1 Q Who's we?

2 A Who? The company, we.

3 Q Drake Holdings?

4 A Drake Holdings pays her to be bookkeeper by
5 on an hourly rate. I don't know if that's considered an
6 employee or not.

7 Q Has Drake Holdings filed federal income tax
8 returns in the last three years?

9 A My CFO, Mark Tipton, tells me yes.

10 Q Have you seen them?

11 A I don't recall.

12 Q You don't recall seeing any tax returns?

13 A No.

14 Q Okay. Are you aware as to whether or not

15 Drake Holdings currently has a federal -- it will be a
16 State of California tax lien?

17 A If that is true, it's news to me, and to my
18 CFO.

19 MR. BARTLETT: Okay. Your Honor, may I
20 approach?

21 THE COURT: You may.

22 BY MR. BARTLETT:

23 Q If you could take a look at that, please.

24 Have you ever seen that document before?

1 A I have.

2 MR. OTTO: Your Honor, while he's looking at
3 the document I'd like to just lodge an objection as to
4 relevancy and allow the Court to rule.

5 THE COURT: Overruled.

6 THE WITNESS: I don't recall ever seeing this
7 document.

8 BY MR. BARTLETT:

9 Q It is dated 2002. It is a state tax lien, is
10 it not?

11 A I don't know.

12 Q Well, what does it say on the top?

13 A That's what it says, but I guess that's what
14 it is.

15 MR. BARTLETT: Your Honor, then I'd like to
16 have this marked.

17 THE COURT: All right. How did you get to
18 know Ms. Fritz?

19 THE WITNESS: I got -- last weekend in July on
20 Friday afternoon I got a call from my partner, John
21 Mazza.

22 THE COURT: This year?

23 THE WITNESS: This year.

24 THE COURT: Okay.

1 THE WITNESS: And he said, "I have this lawyer
2 from New York calling me". Do you realize -- and she's
3 telling us that Drake is -- somebody's trying to steal
4 Drake. What are you talking about? He goes -- she
5 needs Tipton, our CFO, who is probably more up-to-date
6 on the --

7 THE COURT: So she had called Mr. Tipton?

8 THE WITNESS: No, she called -- she called
9 Mazza. Mazza called me and then on a conference, I gave
10 Ms. Fritz the phone number for Mark Tipton. And that's
11 how I met her.

12 THE COURT: Okay. When you said your partner
13 earlier you meant Mr. Mazza?

14 THE WITNESS: Mazza, right. Right, Mazza and
15 I founded Drake Capital Securities.

16 THE COURT: How do you spell his name, please?

17 THE WITNESS: M-a-z-z-a.

18 THE COURT: Thank you. Go ahead.

19 (Exhibit 8 is marked.)

20 BY MR. BARTLETT:

21 Q I'm handing you back what's been marked
22 Exhibit 8, I guess. Mr. Dilillo, are you aware there's
23 also a county tax lien from the County of Los Angeles
24 filed against the company?

1 A I'm not aware of any tax liens.

2 MR. OTTO: Same objection, your Honor.

3 THE COURT: Overruled.

4 BY MR. BARTLETT:

5 Q So you're not aware of tax liens. Are you
6 aware of any tax bills that you received from the State
7 of California?

8 A I'm not aware of it.

9 Q Mr. Tipton hasn't informed you?

10 A He has not.

11 Q Okay. Are you aware -- do you know whether
12 or not the corporation is registered with the California
13 Secretary of State?

14 A I'm not aware of that.

15 Q You don't know whether you are or you are
16 not?

17 A I think we're not. We're a Nevada
18 corporation.

19 Q Very good. And your testimony is that right
20 now the company is looking for an investment
21 opportunity, correct?

22 A That's right.

23 Q All right. And where is the -- is the
24 company earning any revenue?

1 A Excuse me, not in exactly investment
2 opportunity. We make investments and I make investments
3 every day in the stock market. That's an investment
4 where you're third party. We want to be -- we want to
5 merge with a private company and become part of that
6 private company and help it grow. It's not just a
7 situation where we want to be -- we want to be involved
8 in the business of the company that we merge with. It's
9 not just selling off our position in Drake Holding, so
10 it's different than an investment. It's more of a
11 collaboration or an amalgamation.

12 Q You want to merge with some private company
13 and have an active role in operating the company?

14 A We want to help out. We think we can.

15 Q Okay. Now, if I told you that that is the
16 goal of Mr. Berney's company, North American, the
17 company that is assisting Mr. McBride as the custodian
18 to do the exact same thing that you would like to do, if
19 an opportunity arose to merge with such a company as
20 you're talking about, would you be willing to listen to
21 that kind of an offer?

22 A I would never entertain an offer where my
23 position is diluted 99 percent.

24 Q Well, I didn't ask that. I just asked you if

1 an opportunity such as you've described you're looking
2 for was presented to you by North American or the
3 custodian, would you be interested?

4 A You know, we look at many, many
5 opportunities. And then we look into the backgrounds of
6 the people who are involved as principals in those
7 companies.

8 Q Right.

9 A And so our decision is not only a business
10 one, it's who we're getting in bed with, so to speak.

11 Q Sure.

12 A So knowing what -- well, so I would just say
13 that if everything that's been presented on Mr. Berney
14 and Landmere, et cetera, and the people involved is
15 accurate, I don't think we would get involved with them.

16 Q Okay. But I understand that if what has been
17 alleged is true you might have second thoughts,
18 certainly.

19 A Well, let's put in this way. Right now
20 considering what's happened, we were blind-sided by
21 this, I would think that I wouldn't want to be involved
22 in the person that comes in out of left field and tries
23 to steal my company.

24 THE COURT: Are you familiar through the

1 pleadings in this case of the reverse stock split that
2 occurred?

3 THE WITNESS: I am through the pleadings, yes.
4 And also when the pink sheet company sent to the market
5 makers the notification of the name change, et cetera,
6 it indicated that there was a reverse split.

7 THE COURT: You indicated that you and your
8 partner own about 85 percent of the company?

9 THE WITNESS: The four directors own 85
10 percent.

11 THE COURT: Four directors.

12 THE WITNESS: My partners and I each own 2.5
13 million shares.

14 THE COURT: If the reverse stock split is
15 allowed to stand, you said your interest of those four
16 would be diluted to what?

17 THE WITNESS: If the reverse stock split -- if
18 there is a reverse stock split, and that's all that
19 happens, the percentage of the company that's owned
20 remains the same. However, if you have a reverse stock
21 split and then issue a hundred million or a huge amount
22 of shares, then two people other than who were the old
23 shareholders, then your interests are diluted enormously
24 and that's what happened in this case. It wasn't the

1 reverse stock split per se that diluted us, it was the
2 issue of a hundred million shares which is interesting
3 because we only have 50 million shares authorized.

4 BY MR. BARTLETT:

5 Q Let me ask you this. How do you know that
6 hundred million shares was issued?

7 A Well, that's what the pleadings say.

8 Q What if the pleadings are wrong. Do you know
9 who they're issued to?

10 A I don't recall.

11 Q Did you ever call Mr. Berney up to ask him?

12 A No.

13 Q Did you ever call Mr. McBride up?

14 A No.

15 Q Why not?

16 A Trying to steal my company.

17 Q How did you --

18 A I don't even talk to them. I immediately
19 called my counsel. Why would I want to talk to them?

20 Q To find out what's going on.

21 A I know what's going on. I know what's going
22 on. Myself and my partner, my directors own 85 percent
23 of the company. We know what's going on in my company.
24 They're trying to take it over through some -- you know,

1 some maneuver that we had never heard about, so we
2 contacted counsel. I don't want to talk to them.

3 Q Okay. So you're acting under certain
4 assumptions that you've been told things by your counsel
5 and by other people --

6 A Yes.

7 Q -- allegations in the pleadings right now,
8 right?

9 A That's right. And they seem to have been
10 verified by the official document that came over from
11 the pink sheets on that Monday afternoon.

12 Q That document said that the name was being
13 changed, right? And that there had been a reverse stock
14 split, right?

15 A Right.

16 Q And what else did it say?

17 A It would be effective next day.

18 Q So those two things, the name change and
19 reverse stock split?

20 A I have to look at the document. It may
21 contain something else.

22 Q So -- okay. Now, do you acknowledge that
23 your company did not maintain a current address with the
24 Nevada Secretary of State?

1 A We change -- we changed our addresses, I said
2 before, and we sent to the post office a change of
3 address form. How long they keep that change of address
4 effective, I'm not quite sure. I don't think it's three
5 or four years, but I don't think it's two or three
6 months, either, so we didn't -- I guess that answers the
7 question.

8 Q Well, your answer, apparently, is you sent a
9 change of address to the post office. Right?

10 A That's right.

11 Q But you didn't contact the Secretary of State
12 directly?

13 A We did not contact Nevada Secretary of State
14 directly. We, as in the past, CT Associates did that
15 for us, our agent did that for us.

16 Q Okay. So when was the last time you --
17 there's been a document, Exhibit 3 entered, and I don't
18 know -- you've probably seen that from Western States
19 Transfer that shows the Drake Holding, a bill for
20 \$25.00, right?

21 A Uh-hum.

22 Q What is that bill for?

23 A A request for the shareholder's list.

24 Q Okay. And when was that request made?

1 A I think it was March of 2004 or whatever the
2 date is on there. March --

3 Q This is hard to read.

4 A Right. See, it's March or January of 2004.

5 Q Where were you getting a shareholder list at
6 that point in time?

7 A Well, like I said, we were looking at many
8 business plans and, hum, we thought a current
9 shareholder list should be in our files.

10 Q All right. Whose responsibility was it to
11 pay Western States Transfer their fees as your transfer
12 agent?

13 A Well, they sent us a bill. I gave the bill
14 to Millie.

15 Q Okay. So do you know whether or not you had
16 maintained your account with the transfer agent current
17 as of April of this year?

18 A Yes.

19 Q You believed you were current?

20 A Yes.

21 Q If I was to tell you that according to
22 Western States you weren't current would that surprise
23 you?

24 MR. OTTO: Objection, your Honor. Calls for

1 speculation. I mean, I don't understand the question.

2 THE WITNESS: I didn't even hear the question.
3 I couldn't understand the question.

4 THE COURT: Overruled. You may answer it.

5 BY MR. BARTLETT:

6 Q If Western States -- would you be surprised
7 to know that Western States maintains that they were not
8 current as of March of 2005?

9 A Current meaning?

10 Q Their fees paid.

11 A Absolutely floored by that since I spoke to
12 them yesterday.

13 Q Okay. Is there a bank account for Drake
14 Holdings?

15 A Yes.

16 Q Okay. Who's that maintained with?

17 MR. OTTO: Your Honor, I don't understand the
18 nature of this line of questioning.

19 THE COURT: What's the objection?

20 MR. OTTO: Excuse me?

21 THE COURT: What's the objection?

22 MR. OTTO: The relevance --

23 THE COURT: Overruled.

24 MR. OTTO: -- to whether a shareholder's

1 meeting was held in this case.

2 THE COURT: Overruled. You may answer.

3 THE WITNESS: What's the question?

4 BY MR. BARTLETT:

5 Q The question was what's the name of the bank
6 that you maintained the corporate account?

7 A Wells Fargo.

8 Q That's been -- let me ask you this. You
9 testified that the last shareholder meeting was about
10 four years ago for your company?

11 A I don't exactly recall, but it's around that.

12 Q All right.

13 A However, we do get together as directors.

14 Q Do you recall at the time this
15 organization --

16 A Quarterly.

17 Q Do you recall at the time this corporation
18 was formed how many shares were authorized?

19 A When the -- when we first --

20 Q Right.

21 A -- put our operations into Drake Holding?

22 Q Yeah.

23 A I don't recall what the initial authorization
24 was.

1 Q Did there come a time when that
2 authorization, number of shares that were authorized
3 changed?

4 A I don't recall. I just know we have 50
5 million now.

6 Q Do you recall ever having a shareholder's
7 meeting about reducing or increasing the number of
8 authorized shares to the company?

9 A I don't recall.

10 MR. BARTLETT: No further questions, your
11 Honor.

12 THE COURT: Thank you. Mr. Otto.

13 REDIRECT EXAMINATION

14 BY MR. OTTO:

15 Q Mr. Dilillo, the directors who get together
16 on a regular basis own the 58 percent of the
17 corporation; is that correct?

18 A Yes.

19 Q The pink sheet company, their market makers,
20 they notified you of the change of name?

21 A The pink sheet company, yes.

22 Q If Mr. McBride had attempted to contact you
23 through the pink sheet company or any number of market
24 makers he could have easily found you; is that correct?

1 A In a minute.

2 Q Did any of the pink sheet companies or the
3 other market makers tell you that Mr. McBride was trying
4 to find you?

5 A No.

6 Q Any of the other officers or directors --

7 A No.

8 Q -- or shareholders that you know of?

9 A No.

10 Q Does a hundred million shares being issued, a
11 dilution of that kind, is that tantamount to a
12 liquidation of your interest, does it come close?

13 A To the tune of 99 percent.

14 Q I believe you have, perhaps, Exhibit 8 in
15 front of you at this time.

16 A Yeah.

17 Q These are notices of tax liens from various
18 entities. Please look at the name of the taxpayer in
19 the first page of Exhibit 8 and read it for the Court,
20 if you would.

21 A Drake and Company Holdings, Inc., and subs
22 Drake Capital Securities, Inc.

23 Q Is that the corporation which you now
24 control?

1 A No.

2 Q Did you sell that corporation in 1998 or
3 prior?

4 A Yes.

5 Q Would you be getting notices of a company you
6 no longer own of tax liens?

7 A I don't believe so.

8 Q Please look at page 2 in Exhibit 8. At the
9 line states debtor, please read the name of the debtor.

10 A Drake Capital Securities.

11 Q Is that the company you now control?

12 A No.

13 Q Fair to say you sold it in 1998?

14 A Yes.

15 Q Would you be notified if Drake Capital
16 securities owes any tax lien anyway if you don't own
17 Drake Capital Securities?

18 A No.

19 Q Please look at, I believe it's page 4,
20 judgments, liens, State of California with a county
21 recorder of deeds. Please read the debtor in that case.

22 A Drake Capital Securities, Inc.

23 Q You no longer own Drake Capital Securities,
24 correct?

1 A No. Sold it in '98.

2 Q Go to the last page, Sacramento County Court,
3 judgments, and liens, State of California. Please read
4 the name of the debtor that that case.

5 A Drake Capital Securities.

6 Q Do you own Drake Capital Securities?

7 A No.

8 Q When did you sell it?

9 A July of '98.

10 Q Please go to the next page, sir. Leon County
11 Circuit Court, State of Florida. Please read the name
12 of the debtor.

13 A Drake Capital Securities.

14 Q Do you own Drake Capital Securities?

15 A No.

16 Q Would you necessarily be notified if somebody
17 in Florida owed a tax debt?

18 A No.

19 Q Go to the next page please, sir. State of
20 Florida, Leon, recorder of deed. Please read the debtor
21 in the case.

22 A Drake Capital Securities, Inc.

23 Q Same answer?

24 A Same answer.

1 Q Next page, please. Please read the name in
2 the case.

3 A Drake Capital Securities, Inc.

4 Q Same answer?

5 A Same answer.

6 Q Please go to the next page.

7 A Drake Capital Securities, Inc.

8 Q And the next?

9 A Drake Capital Securities, Inc.

10 Q And the next?

11 A Drake and Company Holdings and subsidiaries,
12 Hanover Street, Hanover Square, New York. That's, by

13 the way, who sold --

14 Q That's who you sold it to?

15 A That's who we sold it to. they changed their
16 name to Drake and Company Holdings.

17 Q All right. Let's go -- let's not bore
18 everybody any further. None of these goes to Drake
19 Holdings Corporation; is that correct?

20 A No.

21 Q And when are these entered? Let's go to the
22 last page, sir. Drake Capital Securities Inc., 7
23 Hanover Square, Second Floor, New York, New York.
24 Docket date, correct, when I say 3-12-2003?

1 A That's right.

2 Q You didn't own it at that time.

3 A No.

4 Q Filing date on the one -- moving backward,
5 Drake and Company Holdings, Inc. and subs Hanover
6 Square, New York, filing date 10-31-2000, correct?

7 A Yes.

8 Q Going backward again, Leon County Circuit
9 Court, entered May 26, 2004, correct?

10 A Yes.

11 Q You didn't own it?

12 A No.

13 Q And on and on, correct, if you look at every
14 one of them --

15 A Yeah.

16 Q -- you didn't own any of these corporations
17 when the tax liens were entered against them; is that
18 correct, sir?

19 A That's correct.

20 MR. OTTO: Thank you very much.

21 THE COURT: Mr. Dilillo, I think I'm familiar
22 with what pink sheet companies are, but for the record
23 could you state what they are, please? What is a pink
24 sheet company?

1 THE WITNESS: Well, it's an over-the-counter
2 company. There are levels of being public. When you're
3 public you have to be able to be traded. Somebody has
4 to be able to buy and sell your stock. First level or A
5 level is the pink sheets where you're nonreport. You
6 don't have to file 10-K's, but you have market makers
7 and the public can buy and sell those securities. Then
8 there's a bulletin board where your reporting company,
9 you have market makers, then there's nasdaq, small
10 capital, which has certain requirements, and then
11 NASDAQ, the main NASDAQ which you have to meet certain
12 minimum equity requirements and volume requirements.

13 The pink sheets is where initial -- companies
14 that don't for some reason want to be reporting company
15 at that stage in the business, but they want to be
16 public for various reasons, that's where they like to
17 list.

18 THE COURT: But lower capitalization
19 companies, usually.

20 THE WITNESS: Usually, yes. However, in the
21 past year, being public in pink sheets and not being a
22 reporting company has become more attractive than it has
23 been in the past because of Sarbanes-Oxley you don't
24 have to comply -- you don't have to be -- the burden of

1 Sarbanes-Oxley and the burden of filing quarterly is
2 not on you if you have pink sheets and you can
3 concentrate on conducting your business.

4 In addition to that, the pink sheet market has
5 become -- when I got in the business the pink sheet
6 market was a bulletin board, literally a backboard in
7 brokerage as someone would call up and you scratch off
8 the price. Now it's all electronic, so it's called
9 electronic pink sheet market. And you could go to the
10 computer and get a quote any time. The pink sheet is
11 all electronic right now with the market makers, so its
12 stature has increased tremendously in the past year or
13 so for -- mainly for those two reasons.

14 THE COURT: Thank you. We'll be in recess in
15 this case, gentlemen. I have another proceeding at
16 1:30, so this hearing will resume at 3:00.

17 Court is in recess.

18 THE COURT: Mr. Otto, please call the next
19 witness.

20 MR. OTTO: We had Mr. Dilillo on the witness
21 stand, I believe, your Honor.

22 THE COURT: I thought we were finished with
23 him.

24 MR. OTTO: I have a few questions for

1 Mr. Dilillo.

2 THE COURT: Okay. Quick, quick. Please
3 resume the witness stand.

4 MR. OTTO: Mr. Bartlett finished with
5 Mr. Dilillo?

6 THE COURT: I thought so. Mr. Dilillo --

7 MR. BARTLETT: I wasn't asking him questions
8 when we broke.

9 THE COURT: I thought Mr. Otto was and he was
10 finished. I don't care what you do.

11 MR. OTTO: Just a couple, your Honor.

12 THE COURT: All right. Go ahead.

13 CONTINUATION REDIRECT EXAMINATION

14 BY MR. OTTO:

15 Q Showing you, Mr. Dilillo, what's been marked
16 as Exhibit 9 stipulated to admission, Certificate of
17 Amendment. Do you recognize that document?

18 A No.

19 Q You never received a copy of this document?

20 A No.

21 MR. OTTO: All right. Thank you.
22 Mr. Dilillo, I have nothing more for you.

23 THE COURT: All right. Thank you. You may
24 step down. Please call the next witness.

1 Exhibit 9 is admitted.

2 (Exhibit 9 is admitted into evidence.)

3 MR. OTTO: I call R.K. McBride, please.

4 THE COURT: Thank you. Mr. McBride, please
5 step forward, raise your right hand and be sworn as a
6 witness.

7 ROBERT K. MCBRIDE,
8 called as a witness by the Appellant herein,
9 being first duly sworn, was examined and
10 testified as follows:

11
12 THE COURT: Please take the witness stand and
13 be seated.

14 DIRECT EXAMINATION
15 BY MR. OTTO:

16 Q Mr. McBride, please state your name and
17 spell it for the record.

18 A Robert K. McBride.

19 Q What is your occupation?

20 A I'm a contractor.

21 Q What kind of contractor?

22 A Building.

23 Q And do you own a building contractor company?

24 A I am the company.

1 Q Do you have employees?
2 A No.
3 Q So sole proprietor builder?
4 A Yes.
5 Q What do you do in that capacity?
6 A Remodel and do add-ons and remodeling and
7 repair homes, primarily.
8 Q And where do you do that, sir?
9 A Las Vegas, Nevada.
10 Q And how does it come to pass that you became
11 familiar with a company called Drake Holdings
12 Corporation?
13 A I've reached the point in my life where I
14 have no retirement so I decided I need to make some
15 extra money, at which time I talked to Mr. Berney
16 because I have done numerous jobs for him in his offices
17 and his homes and properties at earlier years and I
18 asked about a good avenue, and he put me on to Ms. Dion
19 and we discussed the problem. And I also talked to
20 Eugene and I thought that this would be a good avenue to
21 make a few bucks.
22 Q And you mention Ms. Dion. What is her name?
23 A Corene.
24 Q Her full name Corene Dion?

1 A Corene Dion.

2 Q Is that D-i-o-n?

3 A Yes, it is.

4 Q What is her capacity in relation to
5 Mr. Berney?

6 A I think that she uses him in the act of a --
7 word -- an advisor for -- his primarily focus --
8 function is to find merging companies and that's where
9 his expertise lies and that's what we use them on.

10 Q Are you aware that he had pled guilty and
11 been convicted a conspirator in a fraudulent securities
12 scam?

13 A Yes, I am.

14 Q Did you enter into a business arrangement
15 with him before or after you were aware of that fact?

16 A I never entered into a business contract with
17 him. It was through the company of Mr. Berney.

18 Q But you said that you did work at
19 Mr. Berney's house and Mr. Berney put you on to
20 Ms. Dion?

21 A No, he introduced me to her.

22 Q And do Mr. Berney and Ms. Dion have a
23 business relationship?

24 A She uses him in the capacity of a -- I keep

1 forgetting the word. Any help? Consultant.

2 Q A consultant?

3 A Yes.

4 Q And was it your intent as custodian of Drake
5 Holdings to sell Drake Holdings Corporation under its
6 existing name Drake Holdings or under another name,
7 under Landmere?

8 A Under Landmere.

9 Q And to whom were the proceeds of the sale to
10 go?

11 A Pay off bills originally, but I mean, the
12 full disclosure as to what -- where the monies would go
13 would go through the Dion company.

14 Q So you would pay the monies that you received
15 from the sale of Drake Holdings and its assets, if there
16 were any, or the asset in it being a shell corporation
17 itself to the Dion company.

18 A They would, in essence, be the escrow
19 officers of it, yes.

20 Q Escrow. Did you have an escrow agreement
21 with them?

22 A Yes.

23 Q Did you bring that with you here today?

24 A It's in the contract with -- which is in

1 evidence, yes.

2 Q As custodian of a corporation, to whom do you
3 owe a duty, sir, if you know?

4 A Stockholders.

5 Q Did you plan to give the proceeds of the
6 stock sale to the stockholders?

7 A Well, yes. I'm only operating for the
8 stockholders.

9 Q Were you being paid yourself acting as
10 custodian?

11 A Yes.

12 Q And how much were you being paid?

13 A \$1,000. And then I got stock upon finding a
14 merger or partner.

15 THE COURT: When did you find out the identity
16 of the stockholders of this corporation?

17 THE WITNESS: When did I find the identity of
18 the stockholders?

19 THE COURT: Yes.

20 THE WITNESS: Well, it was recently because we
21 didn't have a stockholder list until --

22 BY MR. OTTO:

23 Q When you say "recently", what do you mean?

24 A Within the last month.

1 THE COURT: Was there a stockholder list
2 available at the office of the Secretary of State?

3 THE WITNESS: Not to the best of my knowledge.

4 THE COURT: Did you check?

5 THE WITNESS: Yes, sir.

6 BY MR. OTTO:

7 Q There was a stockholder list at the transfer
8 agent?

9 A Yes.

10 Q Did you ask the transfer agent before you did
11 a reverse stock split for the shareholder list?

12 A No.

13 Q Why not?

14 A I didn't think it was my duty to do so
15 because there was nothing of revelance for a stockholder
16 meeting.

17 Q Did you believe that you could issue 50
18 million shares out of treasury return or a hundred
19 million shares out of treasury, 50 million of them not
20 authorized by the corporate charter?

21 MR. BARTLETT: I will have to object to the
22 question. It's asking about facts that are not in
23 evidence.

24 THE COURT: Well --

1 MR. BARTLETT: There's no evidence of any
2 shares being issued.

3 THE COURT: Let me ask you a question. You
4 applied to the Court for appointment in this custodian.

5 THE WITNESS: Yes, sir.

6 THE COURT: Let's see when that was. This
7 application was filed on April 22nd, 2005, by the
8 Beesley, Peck and Matteoni firm; is that right?

9 THE WITNESS: Yes.

10 THE COURT: Did you retain them?

11 THE WITNESS: Yes, sir.

12 THE COURT: What money did you pay them?

13 THE WITNESS: Well, it came through the
14 corporation.

15 THE COURT: The Drake corporation?

16 THE WITNESS: No, sir. No, sir. The
17 corporate group office of Ms. Dion's.

18 THE COURT: Did you select this law firm?

19 THE WITNESS: No, she did the leg work.
20 That's what I hired her for.

21 THE COURT: You hired her to select a firm and
22 then you paid her corporation the money for fees?

23 THE WITNESS: Yes. Well, no, sir. No, sir.
24 Our contract --

1 THE COURT: Where did the money come from?

2 THE WITNESS: From The Corporate Group, yes,
3 not my corporate group.

4 THE COURT: What corporate group?

5 THE WITNESS: Ms. Dion's corporate group.

6 THE COURT: That's a corporation?

7 THE WITNESS: It's going to be. It's in the
8 process.

9 THE COURT: What is it now?

10 THE WITNESS: A company.

11 THE COURT: An unincorporated something or
12 other? What is it?

13 THE WITNESS: Yes, sir, an unincorporated
14 company.

15 THE COURT: And that company paid the money to
16 the lawyers to file this case, right?

17 THE WITNESS: Yes, sir.

18 THE COURT: And they selected the lawyers to
19 file this case?

20 THE WITNESS: Yes, sir.

21 THE COURT: And is that Ms. Dion or Mr. Berney
22 or who?

23 THE WITNESS: Ms. Dion and her staff.

24 THE COURT: How many does she have on her

1 staff?

2 THE WITNESS: To the best of my knowledge,
3 three.

4 THE COURT: What's the name of her company?

5 THE WITNESS: I believe it's The Corporate
6 Group. It was in transition at this point in time.

7 THE COURT: Then they filed this application.
8 And before the application was filed, what steps did you
9 take to find out the identity of the shareholders?

10 THE WITNESS: Mailing lists, mailing of the
11 former addresses that we were able to get ahold of.

12 THE COURT: Did you mail something to
13 Mr. Dilillo?

14 THE WITNESS: Yes, we did.

15 THE COURT: And something to Mr. Tipton?

16 THE WITNESS: Yes, sir.

17 THE COURT: Did you call directory
18 assistance --

19 THE WITNESS: Yes, sir.

20 THE COURT: -- for the phone number of the
21 company?

22 THE WITNESS: Yes, sir.

23 THE COURT: What did you discover?

24 THE WITNESS: We had one number that was never

1 answered.

2 THE COURT: How many times did you call?

3 THE WITNESS: I'm -- would have to refer back
4 to Corene, but I -- at least half a dozen times at
5 different times of business day.

6 THE COURT: Well, why would you have to refer
7 back to Corene?

8 THE WITNESS: Because she's the one that
9 handles that thing, sir. That's what I hired her for.

10 THE COURT: Do you know of any reason offhand
11 why she or her company did not file the application to
12 be custodian?

13 THE WITNESS: I believe she's already got her
14 plate full with other companies, sir.

15 THE COURT: Do you know of any reason offhand
16 why you never mentioned her company in the application?

17 THE WITNESS: No, sir. I don't believe -- I
18 didn't think it was necessary. It's like having an
19 office force.

20 THE COURT: After you were appointed
21 custodian, did you do anything to call a shareholder's
22 meeting?

23 THE WITNESS: No, sir. It was under my
24 interpretation that until I had something revelant such

1 as a merger or something of this nature.

2 THE COURT: There was a reverse stock split.

3 THE WITNESS: Yes, sir. Yes, sir, there was.

4 THE COURT: Wouldn't that be, in your phrase,
5 relevant or revelant to notifying the shareholders?

6 THE WITNESS: Only if it was a completed
7 action, sir.

8 THE COURT: Really? Who told you that? How
9 do you know that?

10 THE WITNESS: Well, it's just -- the sole
11 purpose was to get the corporation into a sellable or a
12 merging position and in order to do that I asked certain
13 people in the -- in Corene's group what would be the
14 best avenue of doing it.

15 THE COURT: You said, quote, "As a custodian,
16 I owe a duty to the stockholders".

17 THE WITNESS: That's true, sir.

18 THE COURT: But you're telling me you don't
19 think you had any duty to notify the stockholders of the
20 reverse stock split.

21 THE WITNESS: No, sir. It's --

22 THE COURT: Did you have a duty to notify any
23 of the stockholders you were changing the name of the
24 company?

1 THE WITNESS: No, sir.

2 THE COURT: Did you have a duty to notify the
3 stockholders of your plan to do the reverse stock split
4 and then increase the amount of shares in order to sell
5 the company to another company?

6 THE WITNESS: Only if it was a completed
7 transaction, and I needed their approval.

8 THE COURT: So your view is that you don't
9 have to notify the shareholders that the company name
10 has been changed, the numbers of stock have been
11 dramatically increased, the stock's been sold, and a new
12 company has taken over until after it's done. Is that
13 what you're telling me?

14 THE WITNESS: No, sir. I am saying --

15 THE COURT: Isn't that what you just said?

16 THE WITNESS: Yes, sir.

17 THE COURT: After you have a completed
18 transaction, then you give notice to the shareholders.

19 THE WITNESS: Only to get their permission to
20 finalize the completion.

21 THE COURT: You don't think you need any
22 permission of the shareholders?

23 THE WITNESS: Not as I --

24 THE COURT: Even if they've been shareholders

1 for years to create a business plan and issue stock and
2 go forward and do things until you've got a deal.

3 That's your view.

4 THE WITNESS: When the stock was worth nothing
5 and I -- it had aspirations of make it --

6 THE COURT: Don't waste my time. Answer the
7 question I asked. Is it your -- I'm not talking about
8 proprietary plans. Let's assume it's great, it's gonna
9 benefit the corporation, we're all gonna be
10 millionaires, is it your view that you have no duty to
11 notify the shareholders of the change in name, the
12 issuance of the stock, the business plan, the company
13 who's gonna take it over unless a transaction is
14 completed?

15 THE WITNESS: No, sir.

16 THE COURT: What is your view?

17 THE WITNESS: My view that under the statute,
18 I had the authority to do that.

19 THE COURT: And that is under which statute?

20 THE WITNESS: I would have to refer to my
21 attorney for that.

22 THE COURT: Well --

23 THE WITNESS: Seven --

24 THE COURT: It's under Chapter 78. Where is

1 it? Let me read you subsection 2. NRS 78.347. "The
2 authority of the custodian is to continue the business
3 of the corporation and not to liquidate its affairs or
4 distribute its assets except when the district court so
5 orders".

6 At what point do you think you'd have an
7 obligation as custodian to give the shareholders notice
8 of anything?

9 THE WITNESS: When I had something of
10 relevance to notify them.

11 THE COURT: What does that mean? It's not
12 relevant that you're changing the name? It's not
13 relevant that you're issuing stock?

14 THE WITNESS: I didn't --

15 THE COURT: It's not relevant?

16 THE WITNESS: I authorize stock. No stock was
17 ever issued.

18 THE COURT: It's not relevant to a shareholder
19 of a corporation that additional stock has been
20 authorized?

21 THE WITNESS: As long as it's not inflating
22 the existing shares, no, because it's -- it's just
23 paper. It's nothing until it's issued.

24 THE COURT: If you were a stockholder of this

1 company, say, for years, the stock was going to increase
2 in number, even assuming the value of the stockholders'
3 interest was not diluted, don't you think that's
4 something you reasonably want to know?

5 THE WITNESS: I suppose it may be, yes, sir.

6 THE COURT: And if you were in a company that
7 had a certain name, had had that name for years and
8 years, if the name was gonna be changed, is that
9 something you'd want to know?

10 THE WITNESS: As a stockholder or as a
11 custodian?

12 THE COURT: As a stockholder.

13 THE WITNESS: No, because the name is nothing.

14 THE COURT: Have you ever been appointed by a
15 court as a custodian of another company?

16 THE WITNESS: This is my first time, sir.

17 THE COURT: Do you have any experience at all
18 in the management of corporations?

19 THE WITNESS: No, sir.

20 THE COURT: Do you have any experience at all
21 in dealing in public or private securities?

22 THE WITNESS: No, sir.

23 THE COURT: Other than this corporation, do
24 you own any stock of any company?

1 THE WITNESS: I don't think so. I think it's
2 under five. Three. I don't know.

3 THE COURT: You don't know if it's three?

4 THE WITNESS: Because it's never went through,
5 I -- it was just -- it was an entity that I looked at
6 and --

7 THE COURT: Well, how many times -- have you
8 done a lot of litigation in your life?

9 THE WITNESS: No, sir.

10 THE COURT: So I assume filing a complaint, an
11 application in a lawsuit commencing a lawsuit in a court
12 is something of significance to you?

13 THE WITNESS: Yes, sir.

14 THE COURT: Well, Mr. Otto's question was
15 pretty simple. How many times have you filed custodian
16 application in a court?

17 THE WITNESS: Without my records in front of
18 me, I couldn't tell you.

19 THE COURT: It might be three but you don't
20 know.

21 THE WITNESS: Yes, sir.

22 THE COURT: Did you ever see the Goodbye Girl?
23 It's a movie.

24 THE WITNESS: Yes, sir.

1 THE COURT: About some young people in a car.

2 THE WITNESS: Yes, sir.

3 THE COURT: The girl says to the boy, have you
4 ever done this before? And he says I don't, once or
5 twice is as good. She says, well, was it once or twice?
6 You're telling me you may have done this once or twice
7 or three times, but you're not sure, within that range?

8 THE WITNESS: Yes, sir.

9 THE COURT: All right.

10 BY MR. OTTO:

11 Q Mr. McBride, you're not in any other business
12 an officer or director. Is that true?

13 A Well, right now the way my memory's working,
14 I'm not sure.

15 Q So now your memory's faulty, sir?

16 A Well, I mean, you've already pointed out that
17 it is.

18 Q Are you a Director of European Diversified
19 Holding Company?

20 A I believe I am.

21 Q Are you a Director of National Health Care
22 Alliance, Incorporated?

23 A Yes, sir.

24 Q Are you a director of Landmere, Incorporated?

1 A Yes, sir.

2 Q Are you trust -- I'm sorry, director for
3 Metropolis Technologies Corporation?

4 A That I'm not sure of.

5 Q Are you a president of Tell Data World
6 Services, Incorporated?

7 A Yes, sir.

8 Q You have no business experience?

9 A Except for contracting, no.

10 Q How do you become the president of a
11 corporation then?

12 A In today's world it's quite easy.

13 Q Please explain.

14 A You hire an attorney, he fills out the
15 papers, and you're it.

16 Q What attorney did you hire to make you
17 president of Tell Data World Services, Incorporated?

18 A I haven't got a clue.

19 Q You hired an attorney. You don't remember
20 who?

21 A I don't remember.

22 Q Did you pay them a fee?

23 A Probably did. They don't work for nothing.

24 Q But you don't remember what attorney did it?

1 A No, sir.

2 Q And Metropolis Technologies Corporation,
3 you're a director of that corporation, did you hire an
4 attorney that make you the director of that corporation?

5 A Probably so.

6 Q You don't remember doing it, though?

7 A No, sir, I don't.

8 Q And Landmere you're a director?

9 A Yes.

10 Q Again, you hired an attorney?

11 A Yes, sir.

12 Q Again, you don't remember?

13 A No. Landmere was the same one that filed the
14 papers for becoming the custodian.

15 Q And same question, you're director of
16 National Health Care Alliance, Incorporated, you don't
17 remember which attorney got you that position?

18 A No.

19 Q And European Diversified Holding, same
20 question. Don't remember what attorney?

21 A Yep.

22 Q Was it Mr. Bartlett?

23 A Not to the best of my knowledge, no.

24 Q Are you familiar with the name Koppenhaffer?

1 A No.

2 Q Are you familiar with the name Berney?

3 A Yes.

4 Q Is Mr. Koppenhaffer in the courtroom today,
5 would you know?

6 A Certainly. Yes, sir.

7 Q He is here today?

8 A Yes, sir.

9 Q So you do know him?

10 A Yes, sir.

11 Q And how do you know him?

12 A Through business. He's also a custodian.

13 Q Now, in your application for custodian in the
14 case of Drake Holdings Corporation, you affirmed and
15 testified to the Court that you bought shares in Drake
16 Holdings corporation?

17 A Yes, sir.

18 Q Do you have those shares with you today?

19 A No, sir.

20 Q Where did you get them, the shares, where did
21 you get them?

22 A From the market.

23 Q What market?

24 A Pink sheet, I guess.

1 Q The pink sheets, you guess?

2 A Well, I -- I paid -- I got 600 shares.

3 Q How'd you pay for them?

4 A Check.

5 Q Did you bring copies of the checks with you?

6 A No, sir.

7 Q Did you know you were gonna have a hearing

8 today?

9 A Yes, sir.

10 Q But you didn't bring copies of the checks?

11 A No.

12 Q Didn't bring any papers with you at all

13 today?

14 A Yes, sir.

15 Q What tapes did you bring with you?

16 A The attorney has them.

17 Q All right. Do you know if your attorney has

18 purchased 600 shares of Drake Holding?

19 A He is got a copy of it.

20 Q Does he have a copy of the stock certificates

21 with him?

22 A No, sir.

23 MR. OTTO: If I could have one minute, please?

24 (Short pause.)

1 BY MR. OTTO:

2 Q Mr. McBride, you were going to say something?

3 A Stocks, when they're purchased aren't
4 normally given out.

5 THE COURT: Who did you pay for --

6 THE WITNESS: They're held by --

7 THE COURT: Who did you pay for the stock?

8 THE WITNESS: How much?

9 THE COURT: Who did you pay?

10 THE WITNESS: Who did I pay? I'd have to look
11 at the check.

12 THE COURT: Did you say you gave a copy of it
13 to your lawyer?

14 THE WITNESS: Yes, sir.

15 THE COURT: Okay. Show that to the witness,
16 maybe refresh his recollection. Do we have that?

17 How much did you pay?

18 MR. BARTLETT: What I have, your Honor, is a
19 verification that he has purchased 600 shares in Drake
20 Holding Company from R.K. & Company which is a financial
21 company that --

22 THE COURT: Well, do we have the copy of the
23 check he used?

24 MR. BARTLETT: I don't have a copy of the

1 check.

2 THE WITNESS: It's --

3 THE COURT: Do you know how many shares you
4 purchased?

5 THE WITNESS: 600, sir.

6 THE COURT: Do you know when you purchased
7 those?

8 THE WITNESS: Early April. April 19th,
9 somewhere in there.

10 THE COURT: Tell me again how you purchased
11 them.

12 THE WITNESS: With a check, sir.

13 THE COURT: I mean, what did you do? Did you
14 go to a brokerage house? Did you go on-line? What did
15 you do?

16 THE WITNESS: Through KJR.

17 THE COURT: And who is KJR?

18 THE WITNESS: They're a stock brokerage.

19 THE COURT: You used them on other occasions
20 to purchase stock?

21 THE WITNESS: To purchase other stock, I
22 believe -- yes, sir. Yes, sir.

23 THE COURT: Okay. Go ahead.

24 BY MR. OTTO:

1 Q An amendment was issued, which is in evidence
2 as, I believe, Exhibit 9, Certificate of Amendment to
3 the Articles of Incorporation for Nevada Profit
4 Corporation. I'd ask you to look at that document, sir.
5 Do you recognize it?

6 A Yes, sir.

7 Q It states that 52 percent of the shareholders
8 approve the amendment; is that correct?

9 A Yes, sir.

10 Q How did you get 52 percent approval?

11 A Again, it was in my reading of the statute
12 that made me the --

13 Q No. I mean the physical process, how did you
14 get their approval?

15 A I had it because all the -- according to what
16 I read, in the Nevada statute on being a custodian, at
17 time of appointment I was, basically, given all unissued
18 stock to control.

19 THE COURT: Would you give the witness a copy
20 of Chapter 78? Show it to me.

21 BY MR. OTTO:

22 Q If you would look at Chapter 78, and in
23 particular, I think you're looking at 78.347 and
24 thereabout. Sir, if you'd read that and please explain

1 to me and the Court where it says what you just said.

2 MR. BARTLETT: Well, object to that question
3 because it may not be that particular statute. There's
4 references in other statutes in that statute.

5 THE COURT: Mr. McBride, you have testified
6 that you believe you had authority in more than 50
7 percent of the stockholder because of what you read in
8 the statutes.

9 THE WITNESS: Yes, sir.

10 THE COURT: Now I've give you the corporation
11 statute. You can look at any other statute of the State
12 Nevada, past or present, if you want, and we'll sit here
13 until midnight. You show me where it is.

14 THE WITNESS: Yes, sir. Can I talk to my
15 attorney?

16 THE COURT: Sure. We'll take a brief recess,
17 resume. Mr. McBride, do you know what a fiduciary is?

18 THE WITNESS: Not in the real --

19 THE COURT: I wanted you to talk to your
20 lawyer about that, what that is. Do you know that a
21 custodian appointed by the Court conducts the affairs of
22 the operation does so as an officer of the Court?

23 THE WITNESS: I didn't realize that, sir.

24 THE COURT: All right. We'll resume promptly

1 at four o'clock.

2 (Short break.)

3 THE COURT: Mr. McBride, please resume the
4 stand and refer the Court to the revisions of the Nevada
5 Statute you referred to earlier.

6 THE WITNESS: Okay. 78.347 refers to as
7 custodian appointed to 78.5900, and 78.635 and 78.650,
8 which gets down to 650, goes to 78.640 which reads, "All
9 real and personal property of any solvent corporation
10 whereas situated in all of its franchises, rights and
11 privileges shall, upon appointment of receiver,
12 forthwith be vested in him and the corporation shall be
13 dissolved to title thereto".

14 THE COURT: You remember the question? The
15 question is what is the authority for the custodian
16 without notice or vote of the shareholders to represent
17 that he has a majority of shareholder approval? And
18 that is the authority you've cited.

19 THE WITNESS: Yes, sir.

20 THE COURT: All right. Please proceed.

21 BY MR. OTTO:

22 Q Mr. McBride, you bought your shares in April;
23 is that correct?

24 A Yes, sir.

1 Q You started sending letters to Drake Holding
2 in March; is that correct?

3 A I would have to refer that to Ms. Dion's
4 company. That's who I hired and put into contract and
5 that contract is available to the Court.

6 Q All right. Do you know anybody named Eric
7 Uffner?

8 A Yes, sir.

9 Q And who does he work for?

10 A It's a dba.

11 Q It's a dba?

12 A Doing business as.

13 Q And who's he doing business as?

14 A It's Peter Berney.

15 Q Eric Uffner and Peter Berney are the same
16 person?

17 A Yes.

18 THE COURT: I'm sorry, Eric who?

19 THE WITNESS: Uffner.

20 THE COURT: Upner.

21 MR. OTTO: U-f-f-n-e-r.

22 BY MR. OTTO:

23 Q Mr. McBride, how much did you pay for your
24 shares in Drake Holding?

1 A I -- I do not have the check. I thought I
2 did. It was a different check.

3 Q You don't know how much you paid for them?

4 A I can't remember.

5 THE COURT: Now, listen carefully.

6 THE WITNESS: Yes, sir.

7 THE COURT: Did you, yourself, Mr. McBride,
8 pay for those shares, or did some other company or
9 individual?

10 THE WITNESS: I paid for the shares.

11 THE COURT: You have out of your pocket?

12 THE WITNESS: With a personal pocket.

13 THE COURT: You weren't given the money by
14 somebody to pay for those shares?

15 THE WITNESS: No, sir.

16 THE COURT: Go ahead.

17 BY MR. OTTO:

18 Q You say that Drake Holding Corporation at the
19 time was worth nothing?

20 A It hadn't been traded for quite a few years
21 and there -- the last listed price that I saw was 20
22 cents. The last offered price was \$5.00.

23 Q You don't remember how much you paid for it?

24 A No, sir.

1 Q You do remember what the prices bid and asked
2 for, but you don't remember what you paid for it?

3 A Right.

4 Q Mr. McBride, if you -- as you claim, I
5 believe, that you had complete authority to amend the
6 bylaws, to issue or authorize shares, to change the
7 name, to do a reverse two for one stock split, to amend
8 the bylaws by the amendment I showed you, why does it
9 say 52 percent, not 100 percent of the stockholders? If
10 you say, as you have testified, that you were standing
11 in the shoes of a hundred percent of the stockholders?

12 A No, sir.

13 Q Oh.

14 A The uncirculated stock, sir, is the only
15 thing that I took over which was four -- I can't
16 remember the exact number. Again, just have to refer to
17 Ms. Dion.

18 Q When you say "uncirculated stock", what do
19 you mean?

20 A Ah. The amount of stock still in the company
21 that had been issued.

22 Q Authorized, not issued?

23 A Yes, sir.

24 Q So is that in the statute, too?

1 A It says all properties and titles.

2 Q So isn't that a hundred percent of the stock?

3 A No, because it would -- if it was a hundred
4 percent of the stock it would take the stockholders'
5 rights away from them and I was not doing that.

6 Q But you were going to take 52 percent
7 control. How many shares did you control at 52 percent,
8 in your opinion?

9 A 40,000 or something, 42,000.

10 Q 40,000, as you call them, uncirculated checks
11 shares?

12 A I believe so, again, for the fact you'd have
13 to --

14 THE COURT: Unissued shares.

15 THE WITNESS: Yes.

16 THE COURT: How can you take, on behalf of the
17 corporation on the basis of unissued shares?

18 THE WITNESS: It was like -- like I said, my
19 inter -- my reading of it, it was that it was part of
20 the franchise's rights, privileges and personal property
21 sold with the corporation.

22 THE COURT: So because of this statute you
23 believe you could just do anything you felt was
24 appropriate for the corporation, period, under his

1 story; is that right?

2 THE WITNESS: To enhance the stockholders'
3 position, yes.

4 THE COURT: You didn't care about whether
5 stock was issue, unissued, authorized or unauthorized,
6 did you?

7 THE WITNESS: As far as the stock that I
8 controlled? Yes.

9 THE COURT: As far as obtaining over 50
10 percent of the stockholders' approval to do things in
11 the corporation, did you care about that or not care
12 about that?

13 THE WITNESS: Certainly, sir.

14 THE COURT: Well then, if you cared about it,
15 how did you obtain over 50 percent?

16 THE WITNESS: I don't quite understand the
17 question, sir.

18 THE COURT: A person can say look, Judge, the
19 way I read this statute, once I am appointed custodian,
20 I own everything in the corporation --

21 THE WITNESS: Which I don't believe that --

22 THE COURT: -- so I don't have to give notice
23 to shareholders, I don't have to have meetings, we don't
24 have to issue stock, who cares. Or a person can say

1 even though I've got authority as custodian there's
2 still certain things that have to be authorized by the
3 shareholders and you have to get above a 50 percent
4 vote.

5 THE WITNESS: Yes, sir.

6 THE COURT: Now, did you have to get a 50
7 percent vote for this amendment?

8 THE WITNESS: I did not believe so.

9 THE COURT: Did you actually get -- have a
10 vote that was above 50 percent?

11 THE WITNESS: I was never in contact with the
12 stockholders.

13 THE COURT: Well then, where was that exhibit,
14 Mr. Otto?

15 MR. OTTO: Which one, your Honor?

16 THE COURT: Representing the 52 percent.

17 MR. OTTO: The amendment.

18 THE COURT: Go ahead. Which number is that?

19 MR. OTTO: It's Exhibit 9, your Honor.

20 THE COURT: Certificate of Amendment, did you
21 sign that?

22 MR. OTTO: That was my next question, your
23 Honor.

24 THE WITNESS: No, sir.

1 THE COURT: Has the signature of something
2 illegible secretary is whose?

3 THE WITNESS: It says secretary, yes. It's
4 Ms. Dion.

5 THE COURT: All right. And what it says is,
6 "The vote by which the stockholders holding shares in
7 the corporation entitles them to exercise at least a
8 majority of the voting power as may be required in the
9 case of a vote by classes or series, or as may be
10 required by the provisions of the articles of
11 incorporation have voted in favor of the amendment" and
12 somebody, presumably, the person who submitted it to the
13 Nevada Secretary of State, says "52 percent".

14 THE WITNESS: Yes, sir.

15 THE COURT: So you're telling the Secretary of
16 State we had a vote and 52 percent of the stockholders
17 voted; is that right?

18 THE WITNESS: Yes, sir.

19 THE COURT: And you're telling me one, we
20 didn't have any vote. Two, I don't own 52 percent of
21 the stock. And three, there was never any vote on
22 anything where 52 percent was the result; is that right?

23 THE WITNESS: I was under the impression I
24 controlled that uncirculated stock.

1 THE COURT: So you rely on what you call
2 uncirculated, unissued --

3 THE WITNESS: Yes, sir.

4 THE COURT: -- stock.

5 THE WITNESS: Yes, sir.

6 THE COURT: And you believe that even though
7 the stock was never issued to any human --

8 THE WITNESS: Yes, sir.

9 THE COURT: -- you can count it in arriving
10 at 52 percent.

11 THE WITNESS: Yes, sir.

12 THE COURT: You want to tell me why you
13 believe that?

14 THE WITNESS: It was what I was told, I
15 believe it was by our office.

16 THE COURT: Whose office?

17 THE WITNESS: The office of Dion.

18 THE COURT: And the office of Dion told you
19 that you could tell the Secretary of State we had a vote
20 and 52 percent voted for X, even though, number one, you
21 didn't have a vote, and number two, the 52 percent
22 figure was unissued stock.

23 THE WITNESS: Yes, sir. Then I thought I
24 could.

1 THE COURT: Does that sound okay to you?

2 THE WITNESS: Well, the way you put it now,
3 no.

4 THE COURT: Well, is there some other way to
5 put it?

6 THE WITNESS: Well --

7 THE COURT: You told us this afternoon you had
8 an election, you never did. You notify the stockholder,
9 you never told them anything. You never noticed a
10 meeting, you never had a meeting. You never took a
11 vote, there was never any counting of the votes. All
12 true?

13 THE WITNESS: That is true.

14 THE COURT: You never had 52 percent of the
15 issued stock, true?

16 THE WITNESS: I was under the impression I
17 did, yes.

18 THE COURT: You had 52 percent of the issued
19 stock?

20 THE WITNESS: Oh, excuse me, not issued, no.
21 No, sir.

22 THE COURT: You know the difference between
23 uncirculated stock and issued stock?

24 THE WITNESS: Yes, sir.

1 THE COURT: Did you ever have 52 percent of
2 the issued stock?

3 THE WITNESS: No, sir, I did not.

4 THE COURT: And somebody told you because you
5 had 52 percent of the unissued stock --

6 THE WITNESS: Uh-hum, yes, sir.

7 THE COURT: -- you could file a piece of
8 paper with the Secretary of State, tell them there was a
9 meeting, the stockholders voted and 52 percent of them
10 voted for this?

11 THE WITNESS: Yes, sir, because I thought I
12 was the 52 percent and, therefore, I voted and says
13 we're gonna change the name.

14 THE COURT: Boy, oh, boy.

15 BY MR. OTTO:

16 Q Mr. McBride, where do you get the 52 percent
17 from 40,000 shares issued you, uncirculated, unissued,
18 unauthorized, call it what you like?

19 A That was the figure I was given.

20 Q You were given that figure?

21 A Yes, sir.

22 Q By who?

23 A Ms. Dion.

24 Q Do you recognize Ms. Dion's signature on

1 Exhibit 9?

2 THE COURT: Here we go.

3 THE COURT: Did you do anything for this
4 corporation other than whatever it was Ms. Dion told
5 you?

6 BY MR. OTTO:

7 Q Is that Ms. Dion's signature at the bottom
8 there?

9 A Yes.

10 Q Thank you.

11 THE COURT: Mr. McBride? Did you just do
12 whatever Ms. Dion told you to do --

13 THE WITNESS: No, sir.

14 THE COURT: -- is that it? What independent
15 judgment did you actually exercise on behalf of this
16 corporation?

17 THE WITNESS: Whatever the options were given
18 to me, I made up my mind whether we were going to go
19 ahead with it or not.

20 THE COURT: Who gave you options?

21 THE WITNESS: The -- with the --

22 THE COURT: I don't care if you took any
23 responsibility or if you're not. If you didn't, say so.
24 If you did, then I want to know exactly what

1 responsibility you took.

2 This Court was given an application signed by
3 you requesting that the Court appoint you to assume the
4 duties of custodian of this corporation.

5 THE WITNESS: Yes, sir.

6 THE COURT: Now, other than be a conduit for
7 whatever Ms. what's her name wants you to do, what did
8 you do after I appointed you?

9 THE WITNESS: I went out and hired myself some
10 experts that I thought was going to keep me informed.

11 THE COURT: And that is who?

12 THE WITNESS: The Corporate Group. Ms. Dion's
13 corporate group.

14 THE COURT: Go ahead.

15 BY MR. OTTO:

16 Q Did you hire Ms. Dion's corporate group
17 before or after you bought your shares in Drake Holding
18 or say you bought your shares in Drake Holding?

19 A Before.

20 Q You hired her before you bought your shares
21 in Drake Holding?

22 A Yes, sir.

23 Q And you bought your shares in Drake Holding
24 at the behest of Peter Berney?

1 A Who?

2 Q Peter Berney.

3 A Yeah. I mean, what did you say prior to --

4 Q At the behest, you bought these shares at the
5 recommendation of Peter Berney?

6 A Yes.

7 Q And I showed you Exhibit 9 and do you
8 recognize that signature as Ms. Corene Dion?

9 A Yes.

10 Q I'm going to show you a document and see if
11 you recognize it. It's a Certificate of Amendment for a
12 corporation also before Department 6, Axion Spatial, of
13 which a custodian was named. And do you recognize the
14 signature at the bottom of that Certificate of
15 Amendment?

16 A Yes, sir.

17 Q And would you read what percentage of the
18 corporation authorized an amendment to the corporate
19 charter, name change? It's 52 percent, isn't it?

20 A Yep.

21 Q 52 percent?

22 A Yes, sir.

23 Q For Axion changing the name to Foster
24 Grayson. That's also here and you recognize Ms. Dion's

1 signature?

2 A Yes, sir.

3 Q Also looking at another Certificate of
4 amendment, I believe this case might be before
5 Department 6 as well. Do you recognize the signature at
6 the bottom of that document, sir?

7 A Yes, sir.

8 Q And whose signature is it?

9 A Ms. Dion's.

10 Q And again, a name change, correct?

11 A Yes, 52 percent.

12 Q 52 percent there as well. And that is
13 Skygiver -- Skygivers. And I'm showing you another name
14 change, Certificate of Amendment to a name change for
15 Tenkom Group, Inc., changing the name to VMT Scientific.
16 And would you look and see whose signature is there?

17 A Eugene's.

18 Q Eugene Koppenhaven?

19 A But I do not know his signature by sight.

20 Q What percentage of the stockholders authorize
21 that?

22 A 52.

23 Q 52 percent. Showing you again a document
24 signed by Peter Berney, a Certificate of Amendment on a

1 company called Titan Motorcycles, changing the name to
2 Feris International, and what percentage of the
3 stockholders authorize that name change?

4 A 52 percent.

5 Q And the final one, at least in this group,
6 again signed by Mr. Peter Berney issuing a reverse stock
7 split of 400 to 1 for a corporation called Feris
8 International, and would you please tell the Court what
9 percentage of the shareholders reputedly authorize that
10 stock split?

11 A 52 percent.

12 MR. OTTO: 52 percent. I would move to have
13 these documents admitted into evidence.

14 THE COURT: Any objection?

15 MR. BARTLETT: No.

16 THE COURT: They are admitted.

17 (Certificate of Amendments was admitted as
18 Exhibit 10, 11 & 12.)

19 THE COURT: This is one document. And
20 Mr. Otto, how many of those were custodian proceedings
21 in Department 6?

22 MR. OTTO: A least two, your Honor. There may
23 be more. I can't quite tell.

24 THE COURT: All right.

1 MR. OTTO: We do have a list, I believe,
2 somewhere of all the Department 6 cases. Having a hard
3 time putting my hands on it.

4 THE COURT: If you'll supply that to the
5 clerk, Ms. Clerk, I'd like those files delivered to the
6 bench. Go ahead.

7 MR. OTTO: I would also like to admit into
8 evidence, and I'll let counsel see it, a list of 40
9 companies before the courts of Nevada, all custodian
10 applications made by Koppenhaven, Peter Berney, R.K.
11 McBride; one is care of Wall Street, one is Sidney
12 Rudnich, but the rest have just those names. There's 40
13 of them before the courts of this state, and the case
14 numbers -- the names are listed, the case numbers are
15 not. And I would ask that that be admitted on
16 stipulation?

17 THE COURT: Any objection?

18 MR. BARTLETT: No objection.

19 THE COURT: It is admitted.

20 BY MR. OTTO:

21 Q Mr. McBride, I'm almost done; I don't know if
22 the Court is. Do all the -- do all -- does Ms. Dion's
23 group, as you call it, operate out of 350 Kachina Circle
24 in Las Vegas?

1 A Yes, sir, they do.

2 Q Does Mr. Berney operate out of Kachina Circle
3 in Las Vegas?

4 A Yes, sir, he does.

5 Q Thank you very much. Hold on one second,
6 please.

7 Is that where Peter Berney lives?

8 A Yes, sir.

9 MR. OTTO: I have no further questions at this
10 time.

11 THE COURT: Thank you. Mr. Bartlett.

12 MR. BARTLETT: Thanks.

13 CROSS-EXAMINATION

14 BY MR. BARTLETT:

15 Q Mr. McBride, you did sign the application to
16 become appointed as custodian of Drake Holding Company
17 in this particular case; is that correct?

18 A Yes, sir.

19 Q Okay. And attached to that application is
20 your affidavit; is that correct?

21 A Yes, sir.

22 Q And in that affidavit you indicate you're
23 making under perjury -- strike that.

24 You made your affidavit under penalty of

1 perjury; is that correct?

2 A Yes, sir.

3 Q And is there anything in that affidavit
4 before I show it to you that you can think of, and
5 perhaps I should show it to you first, that is not true
6 and accurate to the best of your knowledge?

7 MR. OTTO: I'd like to -- may I take a look at
8 it first?

9 THE COURT: You may. Pardon me?

10 MR. OTTO: I haven't seen it.

11 MR. BARTLETT: You haven't seen it attached to
12 your motion?

13 MR. OTTO: Maybe I have seen it.

14 MR. BARTLETT: It's the same affidavit in your
15 motion.

16 MR. OTTO: Okay.

17 BY MR. BARTLETT:

18 Q Hand you the exhibits while you're at it.

19 A No, I can see nothing in error there.

20 Q Okay. Is there anything in your affidavit
21 that describes your realm of qualifications to be a
22 custodian?

23 A No.

24 Q Take a look at -- let's see. In your

1 affidavit you indicate that as it is your understanding
2 of May 1st, 2003, Drake Holding Corporation was in a
3 revoke status with Nevada Secretary of State, right?

4 A Yes, sir.

5 Q Okay. And there is an exhibit to your
6 affidavit that supports that statement, is there not?

7 A Yes, sir.

8 Q And what is that exhibit, do you know?

9 A Exhibit B?

10 Q Yeah.

11 A It's from Nevada State Secretary's Office.
12 It's Drake Holdings revoke -- revoked on 5-1 of 2003.

13 Q Okay. And that Exhibit B is a print-out of a
14 web -- a page on Nevada Secretary of State's web site,
15 correct?

16 A That's correct, yes, sir.

17 Q Now, were you involved in notifying the
18 officers and directors of Drake Holding Corporation as
19 reflected on Exhibit B?

20 A Yes.

21 Q Okay. And letters were sent to those
22 individuals, correct?

23 A Yes, sir.

24 Q At the address reflected on the records of

1 the Secretary of State?

2 A Santa Monica, yes, sir.

3 Q And what happened to those letters?

4 A They were returned, undeliverable.

5 Q Were they stamped regular mail or certified?

6 A Certified.

7 Q Now, when you were approached to be a
8 custodian of this company, you were approached by whom?

9 A To be custodian?

10 Q Yes.

11 A I don't think I was approached by anyone.

12 I --

13 Q How did you find out about it?

14 A Through a --

15 Q How did you find out?

16 A That it was available.

17 Q Someone wanted you to be custodian of Drake
18 Holding Company?

19 A I approached the group to find a corporation
20 that I could be a custodian of.

21 Q Okay. And how did you come to approach the
22 group? I take it you're referring to Ms. Dion's --

23 A Yes.

24 Q -- entity, right?

1 A Yes. Well, Peter's.

2 Q Peter Berney turned you on to this
3 opportunity, right?

4 A Yes.

5 Q Okay. And so tell me what the plan was as
6 between you and North American Trading Company, which is
7 Ms. Dion's group. What were they supposed to do and
8 what were you supposed to do?

9 A They were supposed to do the leg work and the
10 legal work to obtain the end result which was a
11 corporation that we could work with and get a merger or
12 something going on.

13 Q Okay. So when you approached North American,
14 Ms. Dion's group, you didn't know anything about Drake
15 Holding Company, right?

16 A No, sir.

17 Q Okay. And to your knowledge, what was the
18 business purpose of Northern American, vis-a-vis, what
19 did they do?

20 A They had contacts in the industry that would
21 show up the corporations that had been -- oh, the word
22 -- defunct. And in turn, they would do the leg work,
23 legal work, as you would in -- have an office if you had
24 an office set up to do such things. Then also provide

1 the money to do it.

2 Q Okay. So North American would try to
3 identify defunct publicly-traded corporations?

4 A Yes, sir.

5 Q Okay. And what would they do with those
6 defunct public corporations that they became aware of,
7 what was their purpose?

8 A Well, the first thing is they do an indepth
9 investigation to find out whether they have assets,
10 liabilities, et cetera, et cetera, whether it has been
11 in business, whether it's been traded, what it was
12 traded for, what it wasn't, how long it's been in
13 action, out of action, and then become a custodian and
14 clean it up and find mergers for it.

15 Q Okay. What would the shareholders of the
16 defunct corporation get out of this business practice?

17 A They would get their stock worth something.
18 I mean, it would -- it would make stock that was worth
19 nothing to something.

20 Q Okay. Was there ever any intent in your
21 experience with North American, was there any intent to
22 take any actions to the detriment of existing
23 shareholders of these companies?

24 A No, sir.

1 Q Was there ever any intent that North American
2 would simply sell the companies, pocket all the money
3 and leave the shareholders with nothing?

4 A No, sir.

5 Q Okay. Was there a -- as part of the business
6 plan, did that include contacting the shareholders of
7 the defunct corporation at some point?

8 A Yes, sir.

9 Q Okay.

10 THE COURT: At what point?

11 MR. BARTLETT: That was my next question.

12 THE COURT: Okay. At what point?

13 THE WITNESS: When we had some positive
14 results for them to look at. When we found a company
15 that wanted to merge or buy it and we'd have a price and
16 we'd have all of our little ducks in a row to show the
17 stockholders what we could do for them.

18 THE COURT: You heard Mr. Dilillo's testimony
19 this morning.

20 THE WITNESS: Yes, sir.

21 THE COURT: And you understand now the
22 background of this company that he and his partner and
23 others developed?

24 THE WITNESS: Yes, sir.

1 THE COURT: Did you know any of that before
2 this morning?

3 THE WITNESS: No, sir. Never even knew what
4 he was doing.

5 THE COURT: Did you hear his testimony that,
6 apparently, it was an oversight that the annual filings
7 were not made by corporation trusts, that was the agent
8 employed by the company to do the annual filings?

9 THE WITNESS: Yes, sir.

10 THE COURT: Did you have any reason to
11 disbelieve that?

12 THE WITNESS: No, sir.

13 THE COURT: Did you hear his testimony that
14 Mr. Dilillo and his partner, and other shareholders of
15 that company before you were appointed custodian, had a
16 business plan very similar to yours, namely, find
17 another private company they could merge with and pursue
18 business development?

19 THE WITNESS: Yes, sir. I totally concur.

20 THE COURT: Do you have any reason to --

21 THE WITNESS: No, sir.

22 THE COURT: Is there any reason to continue to
23 serve as custodian of this company?

24 THE WITNESS: No.

1 THE COURT: The order of appointment is
2 withdrawn. You may proceed.

3 MR. OTTO: The appointment is withdrawn, your
4 Honor?

5 THE COURT: It is.

6 MR. BARTLETT: Well then, your Honor, there's
7 no purpose in proceeding.

8 THE COURT: Let me just ask you do you know
9 who David Shield is?

10 THE WITNESS: Yes, sir.

11 THE COURT: Who's that?

12 THE WITNESS: He's a compliance officer for
13 the Dion group.

14 THE COURT: Who's the compliance officer?

15 THE WITNESS: David.

16 THE COURT: No. What does compliance officer
17 mean?

18 THE WITNESS: He --

19 MR. BARTLETT: Your Honor, he's here today.
20 You can put him on the stand if you'd like to ask him.

21 THE COURT: I'd just like to know if
22 Mr. McBride knows something about him. Do you know what
23 he does?

24 MR. BARTLETT: Okay.

1 THE WITNESS: He's like a law clerk --

2 THE COURT: Okay.

3 THE WITNESS: -- in the stock -- industry
4 like --

5 THE COURT: It is the order of the Court as
6 follows. And let me preface this simply by saying --
7 oh, by the way, does somebody have my copy of the
8 statutes?

9 MR. OTTO: They're right here, your Honor.
10 I'll get them.

11 THE COURT: It was just a little long,
12 Mr. McBride.

13 MR. OTTO: Your Honor, I have a proposed order
14 if the Court would like to read from it. And I'll give
15 Mr. Bartlett a copy as well.

16 THE COURT: I really don't think there's any
17 point in belaboring the hearing. And I will execute the
18 order counsel has presented. But I do want to make a
19 few brief comments. And Mr. McBride, I want you to
20 think about them very seriously.

21 The purpose of the custodian scheme in a
22 Chapter 78 under Nevada Revised Statutes is to be just
23 that, custodian, trustee, guardian, someone entrusted
24 with the assets of a corporation because no one else is,

1 in effect, taking care of business.

2 THE WITNESS: Yes, sir.

3 THE COURT: So someone else does that job. It
4 is a method the law has through the instrument of an
5 officer of the court, the custodian, to conserve and
6 distribute assets of a corporation. It is to take
7 custody of a corporation, not to steal it.

8 Now, what the Court has learned in undisputed
9 testimony is that Mr. McBride seems to be a nice person,
10 has absolutely no experience of any kind directly or
11 indirectly, or by any manner or means in the management
12 and direction of corporations and the development of
13 corporation assets, in the creation of business plans,
14 in the understanding of the securities system of our
15 country or the publicly-traded stock marketplace. To
16 put it mildly, he was simply an instrument, not of the
17 court, in managing this company after the dereliction of
18 its officers, but an instrument of Mr. Berney and
19 Ms. Dion in furthering their scheme of identifying
20 dormant corporations and seizing on that to the vehicle
21 after a custodian appointment to take control and
22 profit.

23 This case is remarkable for the fact, first of
24 all, that the applicant for custodian relief under the

1 statute has no prior experience on the subject, has no
2 real interest in the subject except to do something that
3 might yield some income given the fact he doesn't have
4 any personal retirement. It's remarkable for the fact
5 that there was no further effort of any kind after the
6 appointment of the custodian for the custodian to
7 identify and contact the other shareholders which I
8 find, based on the affidavits that have been submitted
9 and the testimony of Mr. Dilillo, it could have been
10 done by picking up the telephone. I'm shocked that an
11 amendment to the articles which have been submitted to
12 the Secretary of State of our state purport that there
13 was an election and a result of the election and a 52
14 percent vote when there was absolutely no election of
15 any kind anywhere by anyone, no delivery of any
16 information about a business plan to any existing
17 stockholders, and the two gentlemen in California who
18 own the majority of stock in this company that they had
19 created and operated for many, many years literally woke
20 up one day to find that it was stolen, and worst of all,
21 through the device of a custodianship which the law
22 creates to protect companies. I think this conduct is
23 shocking.

24 It is the order of the Court as follows: The

1 order that has been prepared setting aside the
2 appointment will be executed in open court and filed.
3 In addition, the Court awards to respondents the amount
4 of their actual fees and costs incurred in this case, as
5 against the applicant.

6 The Court directs that a transcript of this
7 proceeding be prepared by the court reporter, and sent
8 to Ms. Frances Arenas at the Office of Nevada Secretary
9 of State, and to assist the United States Attorney
10 Katherine -- Kathleen Bliss of the Organized Crime
11 Strike Force of the United States Department of Justice
12 for the District of Nevada.

13 Court is in recess.

14 (Proceedings concluded.)

15 ---o0o---

1 STATE OF NEVADA)

2 COUNTY OF WASHOE)

3 I, JULIE ANN KERNAN, official reporter of
4 the Second Judicial District Court of the State of
5 Nevada, in and for the County of Washoe, do hereby
6 certify:

7 That as such reporter I was present in
8 Department No. 6 of the above court on Wednesday,
9 August 31st, 2005, at the hour of 11:00 a.m. of said
10 day, and I then and there took verbatim stenotype notes
11 of the proceedings had and testimony given therein upon
12 the Order to Show Cause of the case of In The Matter of:
13 Drake Holding Corporation Plaintiff, Case No.
14 CV05-00899.

15 That the foregoing transcript, consisting of
16 pages numbered 1 through 112, both inclusive, is a full,
17 true and correct transcript of my said stenotype notes,
18 so taken as aforesaid, and is a full, true and correct
19 statement of the proceedings had and testimony given
20 upon the Order to show Cause of the above-entitled
21 action to the best of my knowledge, skill and ability.

22 DATED: At Reno, Nevada, this 19th day of September,
23 2005.

24 
JULIE ANN KERNAN, CCR #427