

STATE OF RHODE ISLAND
PROVIDENCE, SC **SUPREME COURT**

UNAUTHORIZED PRACTICE OF LAW COMMITTEE
UPLC FILE NO. 2020-1

IN RE: Eric Bibler

RESPONDENT'S MOTION TO DISMISS
WITH INCORPORATED MEMORANDUM OF LAW

Now comes Eric Bibler, Respondent, by his Attorney, and moves to dismiss the complaint against him.

On January 19, 2021, after the Committee granted his request for a deposition subpoena, Mr. Bibler deposed of Mr. Mark DePasquale. It was Mr. DePasquale whom complainants alleged to be the source of the allegation that Mr. Bibler engaged in unauthorized practice. Specifically, the complaint alleged:

“Indeed, Mr. DePasquale reported to Complainant Mancini that he was approached by Mr. Bibler who engaged in settlement negotiations regarding the Maxon [*sic*] Hill case directly with Mr. DePasquale.”

Complaint at 3.

Mr. Bibler in his response to the complaint asserted that this allegation was patently false:

He has never met Mr. DePasquale, has never spoken with Mr.

DePasquale, has never corresponded with Mr. DePasquale in any

manner. Not in person, not by phone, not by video conference. Not by letter, not by email, not by text. Not through any intermediary messenger, either directly or by inference.

Bibler Response to Complaint at 6.

At the DePasquale deposition (copy of transcript appended), Mr. DePasquale confirmed the falsity of the allegation attributed to him in the complaint:

Q. Have you ever met Mr. Eric Bibler?

A. No. I have not.

Q. Have you ever spoken to Mr. Eric Bibler on the phone?

A. I believe I tried to reach out with him with some emails and some calls, but I've never spoken with Eric Bibler on the phone. To my knowledge, I would say I've never spoken with him at all.

Deposition at 9.

Q. Okay. So, if I'm correct, you've never spoken with him on the phone, correct? I didn't hear that.

A. Correct. To my memory, correct. With my memory right now, I would say I never had a conversation with Mr. Bibler on the phone, and I never had contact with him and dialogue with him at all about this matter.

Q. Okay. Now, I mentioned to you -- we spoke a few seconds ago about the Complaint in this case. Do you recall that?

A. Yes.

Q. Okay. So, if I said to you that a representation was made that you were approached by Mr. Bibler who engaged in settlement negotiations regarding Maxon [*sic*] Hill directly with you, would that statement be true?

A. *I would say that statement would not be true.* I was approached by Mr. Martin, and I forget his last name, with what a counteroffer was after they had a meeting at some Chinese restaurant down the street.

Deposition 10-11 (emphasis added). Mr. DePasquale went on to testify that he made written monetary offers to the Maxson Hill residents to try to settle the litigation. He enlisted Mr. Martin Sheldon, a non-attorney member of the group of residents, in an effort to coordinate the settlement. In exchange for that effort Mr. DePasquale offered to pay Mr. Sheldon an additional \$10,000 for his efforts in attempting to put the settlement together. Deposition at 15-19.

Mr. DePasquale's testimony confirms that the lynchpin of the complaint against Mr. Bibler—that Mr. Bibler “approached” DePasquale to negotiate on behalf of others the settlement of a pending case—was false.

Considering Mr. DePasquale's testimony denying the complaint's allegations, the factual basis to proceed against Mr. Bibler has vanished. In the interest of justice, and to save him from further expense and ordeal in defending himself against a complaint based on a false premise, Mr. Bibler urges this Committee to dismiss it forthwith.

WHEREFORE, Respondent Eric Bibler moves that the complaint against him be dismissed.

RESPECTFULLY SUBMITTED,
Eric Bibler
By his Attorney:

/s/Thomas More Dickinson (No. 2520)
Law Office of Thomas M. Dickinson
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Johnston, RI 02919
Tel. 401-490-8083
Email: tmd@appealRI.com

Date: February 8, 2021

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPREME COURT

IN RE:

ERIC BIBLER,

REMOTE DEPOSITION OF MARK DePASQUALE

Tuesday, January 19, 2021 - 10:01 a.m.

North Kingstown, Rhode Island

* * * * *

---- Susan M. McDermott, Court Reporter ----

RHODE ISLAND COURT REPORTING
TEN DORRANCE STREET - SUITE 800
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I N D E X

Testimony of:	Direct	Cross	Redirect	Recross
Mark DePasquale				
(By Mr. Dickinson	4		--	
(By Mr. Mancini)		--		--

E X H I B I T S

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1 P R O C E E D I N G S

2 MARK DePASQUALE,

3 after having been duly sworn, testified as
4 follows in answer to direct interrogatories

5 By Mr. Dickinson:

6 Q. Okay. Mr. DePasquale, my name is Tom
7 Dickinson. I represent Eric Bibler in
8 correction with this matter; good morning.

9 A. Good morning.

10 Q. And I understand that -- you're the only
11 one I see, but I understand that you are
12 represented by Mr. Mancini who is with you?

13 A. Yes. If he speaks, the camera will catch
14 him, and you can probably see him on the top
15 of the screen to my right.

16 Q. Okay, yeah, I can. He is a little thumbnail
17 there.

18 A. Yes, he is.

19 Q. So, you understand you're here today in
20 response to a subpoena?

21 A. Yes, I do.

22 Q. Okay. And you were served with that subpoena?

23 A. Yes, I was.

24 Q. All right. I'm going to share that document

1 right now. Can you see that?

2 A. That's the one, right.

3 Q. Okay. So, you can see that subpoena on the
4 screen?

5 A. Yes, I can.

6 Q. Okay. And you agree that was the subpoena
7 that you were served with?

8 A. To the best of my knowledge, I would say yes.
9 I didn't get any other subpoenas on December
10 17th, so, I would say, yes, that is the
11 subpoena.

12 Q. Okay. So -- and this was originally scheduled
13 for December 17th, but we had to reschedule
14 to today, correct?

15 A. Correct.

16 MR. DICKINSON: Okay. So, I'm going
17 to ask that the subpoena be marked Exhibit 1,
18 and I will email that to the court reporter
19 afterwards, and then everyone will get a copy
20 of it who wants it.

21 (Subpoena marked
22 Exhibit No. 1
23 for identification.)

24 Q. So, do you see in the subpoena, the area that

1 says "You are hereby commanded," can you see
2 that?

3 A. Yes.

4 Q. And can you read all that material?

5 A. I'm dyslexic, but I have read it. My counsel
6 has read it to me, but if you want to read
7 it to me to be clear, you can feel free to
8 read it to me.

9 But I'm dyslexic, it's been on public
10 record, everybody knows that.

11 Q. Okay. So, I will read it to you then, and
12 it commands you to bring with you to the
13 deposition "Any and all documents (including
14 but including limited to electronic documents
15 electronic mail messages or texts) reflecting
16 any and all meetings, discussions or
17 communications of any kind between you and
18 Eric Bibler in connection with negotiations
19 in an attempt to settle the so-called Maxon Hill
20 litigation."

21 Did I read that correctly to your
22 knowledge?

23 A. Yes.

24 Q. Okay. Now, were you aware that yesterday

1 your attorney's office produced a number
2 of documents to me?

3 A. Yes, I am.

4 Q. Okay. And were those all of the documents
5 that were -- I'm sorry -- are you still
6 with us?

7 A. Go ahead, I'm here.

8 Q. Were those all of the documents that were
9 responsive to this command?

10 A. Yes, they were.

11 Q. Okay. Well, we may come back to that.

12 So, I notice on your screen, it identifies
13 you as Green Development. Is that the name of
14 your company?

15 A. That's the name of the construction company,
16 one of the companies that I own, Green
17 Development, yes.

18 Q. And is that Green Development, Inc.?

19 A. That's Green Development, LLC.

20 Q. Is there a Green Development Inc. that
21 you're associated with?

22 A. I would say no, right, John, it's not
23 incorporated. No, I'm not associated with
24 Green Development, Inc.

1 Q. Are you aware of a Green Development, Inc.?

2 A. I'm not aware of a Green Development, Inc.

3 All my entities are LLCs. I do not
4 believe at any time it was Green Development,
5 Inc.

6 Q. And, just for the record, you are not an
7 attorney, correct?

8 A. I am not an attorney.

9 Q. What is your relationship with Green
10 Development, LLC?

11 A. I am the founder and the owner of Green
12 Development, the head principal.

13 Q. Okay. So, are you the managing member?

14 A. I would be the managing member.

15 Q. Okay. So, Mr. DePasquale, are you aware that
16 we're here in connection with a matter that was
17 filed with the Unauthorized Practice of Law
18 Committee?

19 A. Somewhat, yes.

20 Q. Have you ever see that Complaint?

21 A. I have not read the Complaint in the entirety,
22 no.

23 Q. Okay. And you understand that the Complaint
24 is against Mr. Eric Bibler?

1 A. I do understand that, yes.

2 Q. Were you involved at all in the preparation
3 of the Complaint?

4 A. Was I involved in the preparation, no, I was
5 not.

6 Q. Have you ever met Mr. Eric Bibler?

7 A. No. I have not.

8 Q. Have you ever spoken to Mr. Eric Bibler on
9 the phone?

10 A. I believe I tried to reach out with him with
11 some emails and some calls, but I've never
12 spoken with Eric Bibler on the phone.

13 To my knowledge, I would say I've never
14 spoken with him at all.

15 Q. Have you ever sent him a text or received a
16 text from him?

17 A. I do not remember ever receiving a text.

18 There is a possibility that I would have sent
19 a text, but I believe I tried to reach out to
20 Mr. Bibler through an email, but I sent all
21 the neighbors some information.

22 But I can't recall right now -- I do not
23 believe I would have sent him a text. It would
24 have been a voice text, automatic voice text,

1 so, I could probably say I did not send him a
2 text.

3 Q. Well, you recall that when we went over the
4 documents that were requested in the subpoena,
5 one of them was any electronic mail messages
6 and another one was texts?

7 A. Yes.

8 Q. Okay. And you didn't produce any electronic
9 mail messages to Mr. Bibler, did you, in
10 response?

11 A. I do not believe I reproduced any mail messages
12 to Mr. Bibler.

13 Q. And you didn't produce any texts that you
14 sent to Mr. Bibler, did you?

15 A. I didn't produce any texts because I don't
16 believe I ever reached out to Mr. Bibler.
17 I reached out to the neighbors.

18 Q. Okay. So, if I'm correct, you've never spoken
19 with him on the phone, correct? I didn't hear
20 that.

21 A. Correct. To my memory, correct. With my
22 memory right now, I would say I never had a
23 conversation with Mr. Bibler on the phone,
24 and I never had contact with him and dialogue

1 with him at all about this matter.

2 Q. Okay. Now, I mentioned to you -- we spoke a
3 few seconds ago about the Complaint in this
4 case. Do you recall that?

5 A. Yes.

6 Q. Okay. So, if I said to you that a
7 representation was made that you were
8 approached by Mr. Bibler who engaged in
9 settlement negotiations regarding Maxon Hill
10 directly with you, would that statement be
11 true?

12 A. I would say that statement would not be true.
13 I was approached by Mr. Martin, and I forget
14 his last name, with what a counteroffer was
15 after they had a meeting at some Chinese
16 restaurant down the street.

17 I sent all the neighbors' information
18 trying to settle the dispute because I didn't
19 feel that anybody was going to win out of the
20 dispute, and I got received back some documents
21 from one of the neighbors, Martin -- and I
22 apologize, I don't remember his last name, but
23 I have his contact -- some of the stuff of
24 what they were looking for, but that wasn't

1 sent directly to me, that was sent through a
2 third party to me.

3 Q. And the third party was the Mr. Martin that
4 you mentioned?

5 A. Yes, which was one of the abutters of the
6 claim. Martin, I believe it was Martin Sheldon.

7 Q. Okay. And Martin Sheldon, was he an attorney,
8 if you know?

9 A. No. He was not an attorney. He was just a
10 man.

11 Q. So, you communicated with the abutters, if I
12 understand correctly?

13 A. I emailed -- I emailed all the abutters, and
14 I sent them certified, I didn't email them,
15 I sent them certified mail to all of them, and
16 I hand-delivered paperwork to all of them of
17 what I was proposing to try to put this
18 situation behind us, and that's how I delivered
19 both of them.

20 And then I did go in to meet the neighbors
21 to talk to them, a couple of neighbors.
22 Basically, Martin was probably the only neighbor
23 that really reached out to have a conversation
24 and wanted to understand the total case and

1 what was going on regarding the appeal and
2 the project and what we were going to be --
3 what we were doing.

4 So, the only real -- the only -- I had a
5 couple of conversations with a neighbor across
6 the street, I don't remember her name. She
7 was getting ready for the holidays, and we just
8 talked quickly. She said she would get back
9 to us.

10 I spoke with Martin. I gave everybody
11 the same exact proposal as a settlement, and
12 I was informed by Martin that they were having
13 a meeting.

14 I said, Hi, I'm available to go to the
15 meeting if anybody wanted to ask any questions
16 regarding it.

17 After that, if my memory recalls right,
18 they came back with some ludicrous proposal
19 to settle something that just wasn't even in
20 the reigns -- which wasn't even in the reigns
21 of what I was proposing for a settlement on it.

22 And the only reason I was trying to settle
23 it is because my counsel and myself, I built the
24 project, I was a hundred percent confident that

1 what the allegations were against the project
2 were not going to hold up, and I felt that
3 helping the people that were around us would
4 have been better to give them something to
5 recoup the money that they spent -- I'm not
6 sure exactly how much money each one of them
7 spent -- but I felt it was the best thing to
8 give them something because the solar farm
9 was being built, and, you know, it was well
10 into construction, and I was trying to put
11 the matter behind all of them.

12 Q. Okay. And I think you said a moment ago that
13 Mr. Sheldon was not the attorney so far as
14 you knew?

15 A. I said no, he is not an attorney, no.

16 Q. Okay. I'm going to show you one of the
17 documents that your attorney produced yesterday
18 in response to the subpoena, and it should be
19 up on your screen now.

20 It's an email. Do you see that on the
21 screen?

22 A. Yes.

23 MR. DICKINSON: Okay. Why don't we call
24 that Exhibit 2.

1 (Email dated 1/14/20
2 marked Exhibit No. 2
3 for identification.)

4 A. I just want to --

5 Q. Can you see it's an email and it appears to
6 be an email from you dated January 14th, last
7 year, to Mr. Martin Sheldon.

8 Do you see that?

9 A. Do you want to just read it just so that it's
10 easier for me?

11 Q. Yes, I will, but can you see it?

12 A. I can see it perfectly.

13 Q. It says, From: Mark DePasquale sent,
14 January 14th, 2020 to Martin Sheldon.
15 "Subject: Additional offer.

16 Martin, I just wanted to put in writing
17 that, as discussed, if all seven neighbors agree
18 to settle, I agree to pay you an additional
19 10,000 for your time and effort in coordinating
20 the group to that end. Sincerely," and then
21 it has your name.

22 Did I read that right?

23 A. Yes, you did.

24 Q. And do you acknowledge that you sent that

1 to Mr. Sheldon?

2 A. Absolutely.

3 Q. And the purpose of, that, if I understand it
4 correctly, was that Mr. Sheldon was negotiating
5 the case, trying to resolve it between you
6 and the neighbors?

7 A. I would not say that he was negotiating the
8 case. He reached out to me. We met a couple
9 of times at the site.

10 He was -- he knew that the property was
11 being built. He was tied into a whole bunch
12 of the group emails going around and everything,
13 so, he was trying to settle the case.

14 And I said to him, "If you settle this,
15 I'll give you an additional \$10,000 for the
16 time that he spent on the settlement" because
17 he physically talked to some of the neighbors
18 about what the issues were and was trying to
19 get a meeting together.

20 I was trying to get a meeting with all of
21 us together to try and put a settlement together
22 just to settle the case.

23 Q. And your sending that email to him was what,
24 was why?

1 A. Just to verify my verbal conversation to him
2 what my intentions are.

3 So, when I told him what we offered, and
4 if I recall, I offered everybody \$20,000. I
5 offered one person the \$20,000 and to purchase
6 their house, and I offered Martin the \$20,000
7 plus an additional 10,000 because he was trying
8 to, trying to work on a meeting to try to settle
9 the whole case so the whole group would have
10 came out with some type of, some type of
11 monetary value to offset the money that they
12 might have spent.

13 And there was one neighbor that is
14 right next to the site that was very upset,
15 and I was trying to work with her, which they
16 never opened their door or answered any of
17 our complaints.

18 I was trying to work with her to either
19 purchase her house, make a settlement and
20 purchase her house.

21 So, that was probably the largest
22 settlement of all of them was. It was the
23 abutting neighbor on Maxon Hill.

24 Q. Okay. And just so I understand, but with regard

1 to Mr. Sheldon, the purpose of this email was
2 to let him know that you would be willing to
3 compensate him for his efforts in trying to
4 bring about the settlement?

5 A. Well, he had the same letter that everybody else
6 got for \$20,000. Everybody was given the exact
7 same email.

8 Martin, again, met me a few times, had
9 phone calls with me asking a lot of questions
10 of just what's going on? What are you building?
11 How are you screening it?

12 He wanted information, and I think he was
13 very -- I think he was confused or unclear of,
14 really, what the whole case was. I don't think
15 he was aware of what the case was about.

16 So, we just -- within that and the time
17 he spent talking to the other neighbors to try
18 to get the group together to have a conversation
19 to put it behind us, I offered him an additional
20 10,000, yes.

21 Q. And that was for his effort, as you said
22 in the email, in coordinating the settlement
23 discussions, correct?

24 A. His effort was the time that he put in meeting

1 with me, the time that he put in meeting with
2 me, and he was the only contact that the people
3 had, and I met with him several times.

4 So, it was for him to try to get everybody
5 together to understand what they were fighting
6 and what the outcome could be and what we were
7 trying to offer so each one of the neighbors
8 would have had some type of compensation for
9 them on the project.

10 Q. Okay. I would like to take a short break.

11 I'm just going to go off screen for maybe five
12 minutes, and I'll be right back. Okay?

13 A. Thank.

14 (Brief recess taken.).

15 MR. DICKINSON: That's all I have,
16 Mr. DePasquale. Thank you.

17 THE WITNESS: Thank you very much, sir.

18 MR. MANCINI: No questions.

19 MR. DICKINSON: No questions, Tamara?

20 MS. TROCHA: No questions.

21 MR. DICKINSON: I would like a copy,
22 and I will email Susan the two exhibits.

23 WHEREUPON:

24 (THE DEPOSITION WAS CONCLUDED AT 10:20 A.M.)

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CERTIFICATE

I, Susan M. McDermott, duly commissioned and qualified within and for the State of Rhode Island do hereby certify:

That the witness in the foregoing deposition named was present at the time and place therein specified via Zoom;

That the said proceeding was taken before me as a Commissioner of Deeds at the said time and place and was taken down in stenotype by me;

That the said proceeding was thereafter transcribed through computer-aided transcription, and that the foregoing transcript constitutes a full, true and accurate report of the proceedings which then and there took place;

That I am a disinterested person to the said action.

That reading and signing of the transcript was not requested by the deponent or any parties involved upon completion of the deposition.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal this 3rd day of February, 2021.

My commission expires: Susan M. McDermott
September 30, 2023 Notary Public

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