

# **Exhibit J**

**Deposition  
Of  
Diane R DeLong**

1

1

2 SUPREME COURT OF THE STATE OF NEW YORK  
County of Monroe

3 -----  
DIANE R. MARKHAM,  
4  
Plaintiff,  
5  
Index No. 2015/9826  
6  
v.  
7 MICHAEL D. MARKHAM,  
8  
Defendant.  
9 -----

10 Deposition Upon Oral Examination of:  
11 Diane R. Markham

12 Location: Fero & Ingersoll, LLP  
2024 West Henrietta Road, Suite 3C  
13 Rochester, New York 14623

14

15 Date: December 14, 2017

16

17 Time: 12:18 p.m.

18

19

20

21 Reported By: LAUREN E. SHERWOOD  
22 Alliance Court Reporting, Inc.  
23 120 East Avenue, Suite 200  
24 Rochester, New York 14604  
25

3

1 STIPULATIONS

2 THURSDAY, DECEMBER 14, 2017;

3 (Proceedings in the above-titled matter  
4 commencing at 12:20 p.m.)

5 \* \* \*

6 IT IS HEREBY STIPULATED, by and among the  
7 attorneys for the respective parties hereto, that:  
8 All rights provided by the CPLR and Part  
9 221 of the Uniform Rules for the Conduct of  
10 Depositions, including the right that all objections  
11 to any question, except as to form or to move to  
12 strike any testimony at this examination are reserved;  
13 And in addition, the failure to object to  
14 any question or to move to strike any testimony at  
15 this examination shall not be a bar or waiver to make  
16 such motion at, and is reserved to, the trial of this  
17 action;

18 IT IS FURTHER STIPULATED, that the reading  
19 and signing of the testimony be waived;  
20 The filing of the original of this  
21 deposition is waived;

22 IT IS FURTHER STIPULATED, that the  
23 attorneys for the parties are individually responsible  
24 for their certified transcript charge, including any  
25 expedite or other related production charges in

2

1

2 APPEARANCES

3 Appearing on Behalf of Plaintiff:  
4 Timothy E. Ingersoll, Esq.  
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9

10 Appearing on Behalf of Defendant:  
11 Gregory J. Mott, Esq.  
12 Davidson Fink, LLP  
13 28 East Main Street, Suite 1700  
14 Rochester, New York 14614  
15 gmott@davidsonfink.com  
16 \* \* \*  
17  
18  
19  
20  
21  
22  
23  
24  
25

4

1 DIANE R. MARKHAM - BY MR. MOTT  
2 accordance with Rochester Rules;

3 AND IT IS FURTHER STIPULATED, that the  
4 Notary Public, LAUREN E. SHERWOOD, may administer the  
5 oath to the witness.

6 \* \* \*

7 DIANE R. MARKHAM,  
8 called herein as a witness, first being sworn,  
9 testified as follows:  
10 EXAMINATION BY MR. MOTT:  
11 Q. Ma'am, you are Diane Markham, the  
12 plaintiff in this divorce action?  
13 A. Yes.  
14 Q. How would you like me to address you, as  
15 Mrs. Markham or Diane?  
16 A. Diane.  
17 Q. Thank you. And Diane, how old are you?  
18 A. 51.  
19 Q. And how would you describe your health?  
20 A. Excellent.  
21 Q. Do you take any mood altering medications?  
22 A. No.  
23 Q. Are you under the care of any therapist,  
24 psychiatrist or psychologist?  
25 A. Nope.

5

1 DIANE R. MARKHAM - BY MR. MOTT

2 Q. Have you been during the past three years?

3 A. **I was briefly, yes.**

4 Q. When was that?

5 A. **In the fall of 2015, when I was filing.**

6 Q. And was it a therapist or a doctor?

7 A. **It was therapist.**

8 Q. And the name of that therapist?

9 A. **I don't remember. I only saw her for like**

10 **six weeks or eight weeks. I'd have to look it up.**

11 Q. Okay. During the time that this lawsuit

12 has been pending, and that starts September 1, 2015,

13 the date of commencement, a very important date, have

14 you been under the effect -- taking any mood altering

15 medications?

16 A. **No.**

17 Q. Okay. And what is your education?

18 A. **I have a bachelor's degree in science.**

19 Q. In what?

20 A. **Biology, I guess.**

21 Q. BS?

22 A. **Yeah.**

23 Q. From what school?

24 A. **Plattsburg, SUNY Plattsburg.**

25 Q. Do you have any advanced degrees or

6

1 DIANE R. MARKHAM - BY MR. MOTT

2 certifications?

3 A. **No -- well, I mean, I have a certification**

4 **in histology, but that would be far outdated at this**

5 **point in time.**

6 Q. Do you have any professional licenses?

7 A. **No.**

8 Q. Any professional certifications?

9 A. **Uh-uh.**

10 Q. You have to answer yes or no.

11 A. **Yeah -- no. Sorry. No.**

12 Q. And where do you currently reside?

13 A. **50 Faraday Street, Rochester 14610.**

14 Q. Faraday?

15 A. **Yeah.**

16 Q. And is that a single-family residence?

17 A. **It's part of a house. It's a partial**

18 **house, rental.**

19 Q. Rental? And how long have you lived

20 there?

21 A. **Since November of last year, so 13 months.**

22 Q. Do you have a written lease?

23 A. **I do.**

24 Q. And how long -- strike that.

25 When does that lease expire?

7

1 DIANE R. MARKHAM - BY MR. MOTT

2 A. **I think August.**

3 Q. Okay. And what's the monthly rent?

4 A. **It's currently 1,100. It's going up to**

5 **1,200 in January.**

6 Q. And who resides there with you?

7 A. **My -- Rory Markham, Rowan Markham, and**

8 **Aidan when he's not at school.**

9 Q. Okay. Anyone else?

10 A. **No.**

11 Q. Has anyone else resided there with you

12 since September 1, 2015, or any --

13 A. **No.**

14 Q. Okay. And are you employed?

15 A. **I am self-employed. I own a small**

16 **business.**

17 Q. And what's the name of that business?

18 A. **Doing business as ZHAG. It's the initials**

19 **for Zelda's Home and Garden.**

20 Q. Okay. Do you have a business location?

21 A. **It's -- the office is at my house. But we**

22 **do work at other people's houses, so there's not like**

23 **a business location.**

24 Q. You say "we." Are you in a partnership?

25 A. **No, my daughter works with me. But we're**

8

1 DIANE R. MARKHAM - BY MR. MOTT

2 **not partners; she's an employee.**

3 Q. Is she paid?

4 A. **Yeah.**

5 Q. What is she paid?

6 A. **\$25 an hour.**

7 Q. Okay. How much has she earned so far this

8 year?

9 A. **I looked this up, too. I can't say for**

10 **sure, but I can provide that.**

11 Q. Okay. Thank you.

12 And what's the nature of your business?

13 A. **We clean houses and do gardening**

14 **seasonally.**

15 Q. Do you have clients that sign contracts?

16 A. **No.**

17 Q. Do you have a website?

18 A. **Yes.**

19 Q. And what is the name of the website?

20 A. **Zeldashomeandgarden.com.**

21 Q. Do you have any other websites?

22 A. **No.**

23 Q. Do you have any other businesses?

24 A. **No.**

25 Q. Have you had any other business of any

9

1 DIANE R. MARKHAM - BY MR. MOTT  
 2 other kind or nature since September 1, 2015?  
 3 A. **Not business. I worked at Wisteria for a**  
 4 **while, if that's what you're asking.**  
 5 Q. Okay. When did you work at Wisteria?  
 6 A. **From September -- I don't remember,**  
 7 **exactly, when I started, around September 2015. The**  
 8 **last time I worked there was probably April of 2017.**  
 9 Q. And during this time, did you also have  
 10 your own business?  
 11 A. **I had -- I mean, I was -- my business**  
 12 **wasn't like official on the record on the books 'til**  
 13 **this year. I was desperately trying to make some**  
 14 **money to feed the kids and pay the rent, so I was**  
 15 **cleaning houses just like on my own, but before I knew**  
 16 **what was entailed in running a business.**  
 17 Q. So you're saying there was unreported  
 18 income?  
 19 A. **Well, it's all -- no, I claimed it. It**  
 20 **was in my taxes. It's in all the statements that you**  
 21 **received. All the deposits were made into my personal**  
 22 **account at the time.**  
 23 Q. Since this lawsuit started, have you  
 24 obtained any additional training or education?  
 25 A. **No.**

10

1 DIANE R. MARKHAM - BY MR. MOTT  
 2 Q. Since this lawsuit started, have you  
 3 applied for any employment anywhere else?  
 4 A. **No.**  
 5 Q. Have you attempted to start any other  
 6 business?  
 7 A. **No.**  
 8 Q. Have you made any attempts to increase  
 9 your income since this lawsuit started?  
 10 A. **Just with the small business I already**  
 11 **told you about.**  
 12 Q. Tell me what efforts you've made to  
 13 increase your income.  
 14 A. **By working more.**  
 15 Q. And when did you start working more?  
 16 A. **We worked full-time over the summer,**  
 17 **because it's a seasonal thing with the gardening. So**  
 18 **my seasonal work from May through September.**  
 19 Q. Well, are you saying that you started  
 20 working more this summer?  
 21 A. **Yeah.**  
 22 Q. And prior to this --  
 23 A. **Well, I was working some last summer**  
 24 **outside, too, because I needed to. I mean, it was all**  
 25 **out of desperation. I needed to make some money.**

11

1 DIANE R. MARKHAM - BY MR. MOTT  
 2 Q. On the date of marriage, July 20, 1996,  
 3 what was your job?  
 4 A. **I was working at Roswell Park Cancer**  
 5 **Institute.**  
 6 Q. And what was the --  
 7 A. **I was the supervisor of the histology lab**  
 8 **there.**  
 9 Q. Do you recall what your income was?  
 10 A. **No.**  
 11 Q. Was it more than \$25,000?  
 12 A. **It might have been 30, 35.**  
 13 Q. How long did you stay working as the lab  
 14 director?  
 15 A. **Yeah -- well, supervisor. I quit working**  
 16 **when our son -- we had -- our son Aidan was born. And**  
 17 **once he was making money from his internship, we**  
 18 **decided that I would stay home and take care of Aidan.**  
 19 Q. Okay. And Aidan's date of birth again is?  
 20 A. **6/12/97.**  
 21 Q. And so then, thereafter, you did not work  
 22 and you lived off the grant money, or the financial --  
 23 A. **Correct, and loans, I think. I don't**  
 24 **really remember the details of the finances back then.**  
 25 Q. Okay. And did there come a time after

12

1 DIANE R. MARKHAM - BY MR. MOTT  
 2 Aidan's birth that you returned to work?  
 3 A. **No.**  
 4 Q. When did you -- when did you -- well, you  
 5 began working for Wisteria in September of 2015;  
 6 correct?  
 7 A. **Correct.**  
 8 Q. Between Aidan's birth and September of  
 9 2015, were you employed outside the home?  
 10 A. **No.**  
 11 Q. Do you have any plans to get further  
 12 training or education?  
 13 A. **No.**  
 14 Q. Do you have any plans to apply for  
 15 employment other than your self-employment?  
 16 A. **No.**  
 17 Q. How much money do you think you will earn  
 18 this year?  
 19 A. **Based on my income, or based on money I've**  
 20 **had to take out of the IRA to pay living expenses?**  
 21 Q. Just income.  
 22 A. **Probably 30 to \$35,000.**  
 23 Q. Do you expect that to increase, decrease,  
 24 or stay the same next year?  
 25 A. **I have no idea.**

13

1 DIANE R. MARKHAM - BY MR. MOTT

2 Q. Do you have any other employees besides

3 your daughter?

4 A. **My son Rowan works for me part-time, in**

5 **the summer, mostly.**

6 Q. Okay. Is he paid?

7 A. **Yeah.**

8 Q. And what's he paid?

9 A. **\$15 an hour.**

10 **Do you want all of the employees?**

11 Q. Well, if you have more.

12 A. **Aidan also worked for me this summer, and**

13 **Sebastian Kinsler.**

14 Q. Which means they'll get W-2s?

15 A. **Yeah.**

16 Q. And is Sebastian a full-time employee?

17 A. **No. No. It's mostly for the summer.**

18 **It's kids. They're in school.**

19 Q. Okay. Would you provide me with the W-2

20 forms for your employees in 2017?

21 A. **When I get them, sure.**

22 Q. Right. Did you have these employees in

23 2016?

24 A. **No. Analise (phonetic) was helping me a**

25 **little bit that summer 2016, but that was -- we**

14

1 DIANE R. MARKHAM - BY MR. MOTT

2 **weren't -- you know, it wasn't a business. It was me**

3 **trying to figure out how to make it work.**

4 Q. So it's fair to say that, since the summer

5 of '16 until the summer of '17, you've increased your

6 employees by four, three?

7 A. **Yeah, for the summer work, I needed to.**

8 Q. And during the winter?

9 A. **During the winter, it's very part-time.**

10 **Analise and I do it.**

11 Q. Do you have a social security statement of

12 benefits?

13 A. **I'd have to go online and get that. I**

14 **haven't seen that in -- for me you mean; right?**

15 Q. Yes.

16 A. **Yeah.**

17 Q. Would you produce that to me through your

18 attorney, please?

19 A. **Yes.**

20 Q. Thank you. And you said your degree is a

21 BS in just biology?

22 A. **Correct.**

23 Q. No subspecialty?

24 A. **No.**

25 Q. And your work was as a lab supervisor?

15

1 DIANE R. MARKHAM - BY MR. MOTT

2 A. **Correct.**

3 Q. Have you looked into resuming employment

4 for any hospital group?

5 A. **I would have to completely retrain. My**

6 **field is dramatically different from when I was**

7 **working, at the time. You know, that was 20 years**

8 **ago, so it's completely different. So now I really**

9 **don't have an interest in retraining in that field.**

10 Q. Well, what kind of retraining would you

11 have to undergo?

12 A. **I'd have to go -- I don't even know. I**

13 **couldn't tell you.**

14 Q. So you haven't looked into any retraining

15 program?

16 A. **Correct.**

17 Q. And you're not planning to?

18 A. **No.**

19 Q. And does that mean that the money you're

20 earning is adequate to pay your bills?

21 A. **No, it's not.**

22 Q. Then it begs the question why you're not

23 looking for better employment.

24 A. **Because I should be getting child support.**

25 Q. And if you got child support, together

16

1 DIANE R. MARKHAM - BY MR. MOTT

2 with your income, that would be sufficient to pay your

3 bills?

4 A. **One would hope.**

5 Q. Are you asking the Court to award you

6 maintenance, as well?

7 A. **Perhaps, I haven't decided that yet.**

8 Q. I see. You heard your husband, Michael,

9 testify that he paid maintenance and child support

10 through September of 2016?

11 A. **I heard that.**

12 Q. Is that accurate?

13 A. **No.**

14 Q. When do you say he stopped paying support?

15 A. **The last support maintenance check was**

16 **July of 2016. Then he paid child support in August of**

17 **2016. The checks that he sent -- the checks that he**

18 **sent over the summer were always cashier's checks.**

19 **The checks that he sent in September for the September**

20 **payment were on the bank account that was frozen, so**

21 **they didn't clear.**

22 Q. So he attempted to pay September

23 maintenance and child support; but, because the

24 account was frozen --

25 A. **Correct.**

17

1 DIANE R. MARKHAM - BY MR. MOTT

2 Q. You did get the checks?

3 A. **I did, but they were different than the**

4 **other checks, being cashier's checks.**

5 Q. The September support checks were received

6 by you but not cashable?

7 A. **Correct.**

8 Q. Because of the seizure?

9 A. **Correct.**

10 Q. Now, we're talking about Bank of Hawaii?

11 A. **No, they were ESL.**

12 Q. So this was an account solely in his name?

13 A. **I don't remember which account he wrote**

14 **the checks from. There's two accounts. I have copies**

15 **of them at home.**

16 Q. Okay. While we're on the topic, you're

17 making reference to a seizure of two ES&L accounts?

18 A. **Well, one didn't have any money in it.**

19 Q. And these were accounts solely in your

20 husband's name?

21 A. **I believe so, but they were accounts that**

22 **were -- yeah, they weren't our joint accounts. They**

23 **were other accounts.**

24 Q. Can you tell me in what manner they were

25 seized?

18

1 DIANE R. MARKHAM - BY MR. MOTT

2 A. **We filed to have those frozen after he**

3 **emptied out the -- we discovered the attempting to**

4 **empty out the SEP IRA and the children's 529. We were**

5 **trying to capture that money before he -- we were just**

6 **trying to catch that money. We didn't file to have**

7 **them frozen until July or August when we --**

8 Q. Of 2016?

9 A. **Correct.**

10 Q. And this was through your then attorney,

11 Mark Bezinque?

12 A. **Correct.**

13 Q. And did he share the paperwork with you as

14 to how he went about seizing these accounts?

15 A. **I'm sure I have the e-mails.**

16 Q. Well, did he actually show you the legal

17 paper?

18 A. **I don't recall.**

19 Q. And the purpose of the seizure was to do

20 what?

21 A. **To try to stop him from taking all the**

22 **money.**

23 Q. You said that you thought that he was

24 going to take all the money from the ES&L accounts?

25 A. **No. I said that we began the process of**

19

1 DIANE R. MARKHAM - BY MR. MOTT

2 **freezing the ESL accounts upon learning that he had**

3 **tried to empty out the SEP IRA and had cashed out the**

4 **children's 529s. So we were trying to freeze the**

5 **money that he -- that Michael had withdrawn from those**

6 **accounts.**

7 Q. How did you find out about this alleged

8 attempt by Michael Markham to take the SEP IRA?

9 A. **I became -- I think I asked Mark to look**

10 **into it because I was concerned with the status of**

11 **things when he texted Rory and said he couldn't make**

12 **visitation because he'd moved to Hawaii.**

13 Q. How did Mark get access to your husband's

14 SEP IRA in the year 2016?

15 A. **I think we must have filed with Scottrade.**

16 **I don't remember the details of how that went down.**

17 Q. When did you file with Scottrade, a

18 subpoena?

19 A. **It would have been in July, when we were**

20 **looking to find out what was going on with the SEP**

21 **IRA.**

22 Q. Wasn't your husband current with the

23 support payments in July?

24 A. **Yes, he was.**

25 Q. So what was your concern if he was current

20

1 DIANE R. MARKHAM - BY MR. MOTT

2 with the support payments?

3 A. **I don't remember. He'd moved. He'd left**

4 **without telling anybody.**

5 Q. Yeah. What was your concern about support

6 payments if he was current?

7 A. **I don't recall what, exactly, initiated my**

8 **concern.**

9 Q. And you're telling me that your then

10 attorney found out through Scottrade that there was an

11 attempt by Michael Markham to withdraw SEP IRA money?

12 A. **Correct.**

13 Q. And did he --

14 A. **Well, I had already -- I'm sorry. I just**

15 **remembered I had already expressed concern over the**

16 **12,000 that he took out of the ESL back in January.**

17 Q. What did he do with that?

18 A. **I have no idea.**

19 Q. Did he pay Talbott?

20 A. **I don't know. He was supposed to pay**

21 **Talbott out of the SEP IRA money. He was given**

22 **permission to pay Talbott from the IRA funds. So I**

23 **don't remember.**

24 Q. Do you know what, if any, documents or

25 records your attorney, Mark Bezinque, received from

21

1 DIANE R. MARKHAM - BY MR. MOTT

2 Scotttrade that support your claim that Michael Markham

3 attempted to liquidate that fund?

4 A. **We have the withdraw -- withdraw request**

5 **that he tried to withdraw 500 -- I forget the**

6 **amount -- \$539,000 or whatever, the withdrawal. We**

7 **submitted that in the...**

8 Q. What we know is that there were

9 withdrawals made by you December 30th, 2016.

10 A. **Well, we have the checks that he got from**

11 **Scotttrade, the canceled checks that he deposited into**

12 **a Bank of Hawaii account. So we do know that he took**

13 **that money out of --**

14 Q. What I'm interested in knowing is, as of

15 July 2016, did your attorney have in his possession

16 documentation of an attempted withdrawal of SEP IRA

17 money by your husband?

18 MR. INGERSOLL: If you know.

19 A. **I forget exactly when we received the**

20 **copies of the forms that he put in the withdrawal**

21 **requests. I don't know when that happened. I believe**

22 **it was in July. I could go look at the e-mail in**

23 **my -- to find out.**

24 Q. And he was authorized in July of '16 to

25 withdraw certain monies to pay medical bills, was he

22

1 DIANE R. MARKHAM - BY MR. MOTT

2 not?

3 A. **Who are we talking about?**

4 Q. Your husband.

5 A. **Michael was authorized by two court orders**

6 **to take money out of the SEP IRAs: One was to pay**

7 **Talbott; and one, to my recollection, was to help pay**

8 **for attorney's fees that he owed me at the time.**

9 Q. And those orders were prior to July 2016?

10 A. **Correct, yes.**

11 Q. And you're saying that, in July of 2016,

12 your then attorney obtained proof from Scotttrade there

13 was an attempt to take out all the money from the SEP

14 IRA?

15 A. **I believe so, yes. I believe that was in**

16 **July, July or August.**

17 Q. Even though he was current with his

18 support payments?

19 A. **I presume.**

20 Q. What does SEP IRA have to do with support

21 payments?

22 A. **I don't -- I don't -- I don't know the**

23 **answer to this, details of what --**

24 MR. INGERSOLL: That's a perfectly valid

25 way to answer.

23

1 DIANE R. MARKHAM - BY MR. MOTT

2 A. **This was Mark. I was desperately trying**

3 **to make things work.**

4 Q. What do you mean?

5 A. **I was just trying to get divorced.**

6 Q. So you thought that seizing the ESL

7 accounts, which was the source of payments of support

8 to you, would be a way to get divorced?

9 A. **Is that a question?**

10 Q. Yeah.

11 A. **No. I thought seizing the ESL accounts**

12 **would prevent Michael from making off with the bulk of**

13 **the SEP IRA money that he withdrew and the children's**

14 **529s.**

15 Q. When did he withdraw money from the SEP

16 IRA?

17 A. **Which time?**

18 Q. Well, how many withdrawals are you aware

19 of?

20 A. **Three or four.**

21 Q. From the SEP IRA?

22 A. **Correct.**

23 Q. How many were prior to July of 2016?

24 A. **Two or three. I don't remember if there**

25 **was two or three.**

24

1 DIANE R. MARKHAM - BY MR. MOTT

2 Q. And do you know whether or not those

3 withdrawals were authorized by a court order?

4 A. **I believe the ones to pay Talbott were.**

5 Q. And prior to July of 2016, were SEP IRA

6 funds used to pay your support payments, if you know?

7 A. **I have no idea.**

8 Q. Were you getting checks prior to July

9 2016?

10 A. **I received checks in February, March,**

11 **April, February through August.**

12 Q. 2016?

13 A. **2016.**

14 Q. What bank accounts were they drawn upon?

15 A. **They were on cashier's checks.**

16 Q. Do you know whether or not your then

17 attorney put Michael Markham's attorney on notice of

18 the seizure of the ESL accounts?

19 A. **I don't remember.**

20 Q. Did you get copies of the papers, the

21 seizure papers?

22 A. **I don't remember.**

23 Q. Will you give me permission to speak with

24 your attorney under oath, your former attorney, Mark

25 Bezinque?

25

1 DIANE R. MARKHAM - BY MR. MOTT  
 2 You have an attorney-client privilege with  
 3 Mark Bezinque. I'm asking you if you'll waive your  
 4 privilege, because I want to question him under oath.  
 5 Will you do so?  
 6 MR. INGERSOLL: Are you commencing a  
 7 proceeding against Mr. Bezinque?  
 8 MR. MOTT: No.  
 9 Q. What I'm going to do is call him as a  
 10 nonparty witness in this proceeding, if you'll give me  
 11 permission to question him. Because you have an  
 12 attorney-client privilege, only you can waive that.  
 13 I'm asking you to waive it, because no one  
 14 has been able to answer any of these questions,  
 15 including you.  
 16 MR. INGERSOLL: Give her time to think  
 17 about this. Let me talk to her about it.  
 18 So the answer would be not at present.  
 19 A. **Not at present.**  
 20 Q. But at some point in time, you will  
 21 respond to me one way or another?  
 22 A. **Sure.**  
 23 Q. Thank you. Sooner than later would be  
 24 good.  
 25 With respect to the seizure, do you know

26

1 DIANE R. MARKHAM - BY MR. MOTT  
 2 how much he seized, Mark Bezinque seized?  
 3 A. **From the ESL accounts?**  
 4 Q. Yes.  
 5 A. **I accounted for that in the paperwork you**  
 6 **received.**  
 7 Q. You did. It's about \$18,000?  
 8 A. **Yes.**  
 9 Q. And my understanding is that he kept it.  
 10 A. **He kept -- he gave me some of it because I**  
 11 **needed it.**  
 12 Q. Because support payments had stopped?  
 13 A. **Yeah. Well, it was -- I don't remember**  
 14 **what it was.**  
 15 Q. Let me ask you this: He gave you a  
 16 certain -- you did give me the paperwork --  
 17 A. **I asked him to give me some of the money;**  
 18 **though, he was entitled to keep all of it.**  
 19 Q. For attorney's fees?  
 20 A. **Correct.**  
 21 Q. He was entitled to keep every dollar  
 22 seized, 18,000-odd dollars for his attorney's fees  
 23 through July of -- or about July --  
 24 A. **Well, it was more than 18, the total**  
 25 **amount.**

27

1 DIANE R. MARKHAM - BY MR. MOTT  
 2 Q. His attorney's fees or the amount seized?  
 3 A. **The amount seized.**  
 4 Q. And he was entitled to keep all of it for  
 5 attorney's fees?  
 6 A. **Yeah, because I owed him more than what**  
 7 **was seized.**  
 8 Q. And how much did he give you --  
 9 A. **\$10,000.**  
 10 Q. And did you give -- strike that.  
 11 How did you understand the \$10,000 to be  
 12 treated, as child support, maintenance or both?  
 13 A. **Neither.**  
 14 Q. What was it -- why did he -- he gave you  
 15 \$10,000 because you asked for it?  
 16 A. **Because I needed it to live.**  
 17 Q. Right. You weren't getting support checks  
 18 from Michael Markham anymore; correct?  
 19 A. **Correct.**  
 20 Q. So did you accept the 10,000 in lieu of  
 21 support checks?  
 22 A. **No.**  
 23 Q. Well, what did you accept it as, just a  
 24 gift?  
 25 A. **That wasn't made clear.**

28

1 DIANE R. MARKHAM - BY MR. MOTT  
 2 Q. It wasn't made clear. Do you know if your  
 3 attorney put Jonathan Trotto, who's still counsel of  
 4 record, on notice of this 10,000 --  
 5 A. **Jonathan Trotto was not on counsel of**  
 6 **record.**  
 7 Q. July 2016, he was.  
 8 A. **No, I didn't get -- the money from the ESL**  
 9 **accounts, I didn't get until...**  
 10 Q. Fall of '16?  
 11 A. **No.**  
 12 Q. When?  
 13 A. **I have that. Where's my chart?**  
 14 Q. Okay. Well, let me ask you this: Was  
 15 the --  
 16 MR. INGERSOLL: If you don't know, just  
 17 say you don't know.  
 18 A. **I don't know. It was way after that.**  
 19 Q. Was it after -- let me rephrase. Was it  
 20 during the year 2016?  
 21 A. **No, I don't believe so.**  
 22 Q. It was in 2017?  
 23 A. **Correct.**  
 24 Q. After the default inquest?  
 25 A. **Correct.**



29

1 DIANE R. MARKHAM - BY MR. MOTT

2 Q. Okay. When did the Bank of Hawaii seizure

3 take place?

4 A. **You mean like when were they frozen?**

5 Q. Yeah. Well, frozen -- did you receive any

6 money from Bank of Hawaii?

7 A. **The only money I received from Bank of**

8 **Hawaii -- I haven't received any money from Bank of**

9 **Hawaii. That check is --**

10 MR. INGERSOLL: Currently in my trust

11 account.

12 Q. Correct. And originally that check was

13 written to Mark Bezinque?

14 A. **Correct.**

15 Q. And that's about 14,000?

16 MR. INGERSOLL: Yes, sir.

17 Q. Do you know what year that seizure took

18 place?

19 A. **The check just came through in September**

20 **or October.**

21 Q. Of 2017?

22 A. **Correct.**

23 Q. Okay. And do you know if that was

24 pursuant to an order of the Court?

25 A. **It was pursuant to the judgment.**

30

1 DIANE R. MARKHAM - BY MR. MOTT

2 Q. The default judgment?

3 A. **Yes.**

4 Q. And do you know what that was for, what it

5 was supposed to be used for?

6 A. **No.**

7 Q. It was never paid to you, though, was it?

8 A. **No.**

9 Q. In the year 2016, did you obtain funds

10 from Michael Markham's SEP IRA?

11 A. **No -- well, the funds were transferred to**

12 **my account that I had already there at the end, I**

13 **guess, the end of the year. Scottrade --**

14 MR. INGERSOLL: What year?

15 THE WITNESS: 2016.

16 Q. On or about December 30th?

17 A. **Correct.**

18 Q. How much was that?

19 A. **210.**

20 Q. And do you know if there was a court order

21 directing that transfer?

22 A. **Scottrade did that based on the judgment**

23 **of divorce. That's my understanding. Because the**

24 **judgment of divorce was signed on December 22nd.**

25 Q. And then there was an amended judgment of

31

1 DIANE R. MARKHAM - BY MR. MOTT

2 divorce after that, wasn't there?

3 A. **There was because the kids' date of birth**

4 **weren't -- the only reason it was amended was for the**

5 **date of births to be put in so I could file with child**

6 **support collection unit.**

7 Q. Are you currently -- do you currently have

8 an account at CSCU?

9 A. **No.**

10 Q. So you never did file?

11 A. **They closed it when the judgment of**

12 **divorce was vacated.**

13 Q. Okay. But there had been an account?

14 A. **Yeah.**

15 Q. Okay. Can you tell me, from September 1,

16 2012, to September 1, 2015, in chronological order

17 where you lived starting September 1, 2012?

18 A. **In September of 2012, I lived at South**

19 **Landing Road.**

20 Q. With whom?

21 A. **My family.**

22 Q. Okay. And how long did you live there?

23 A. **We had lived there for probably around**

24 **eight years.**

25 Q. From September 1, 2012, until when?

32

1 DIANE R. MARKHAM - BY MR. MOTT

2 A. **We decided to pursue this part-time Hawaii**

3 **thing, and we moved to a rental property in May of**

4 **2014.**

5 MR. INGERSOLL: Rental property where?

6 THE WITNESS: 36 Darwin Street.

7 Q. So South Landing was sold?

8 A. **It was on the market.**

9 Q. When did you sell it?

10 A. **Not until 2015. Took a year.**

11 Q. And was that property titled in joint

12 names?

13 A. **No, it was in his name.**

14 Q. Did you object to the sale of South

15 Landing?

16 A. **No.**

17 Q. And what happened to the sale proceeds of

18 South Landing?

19 A. **What Michael said, we put money towards**

20 **the property in Paia and got things squared away.**

21 Q. Did you pay any bills or debts here?

22 A. **I presume, yeah. I don't remember,**

23 **exactly, the breakdown of the finances.**

24 Q. And then you moved to 36 Darwin Street, a

25 rental?

33

1 DIANE R. MARKHAM - BY MR. MOTT

2 A. **Correct.**

3 MR. INGERSOLL: When was that?

4 THE WITNESS: In May.

5 Q. Of 2014?

6 A. **May or June of 2014.**

7 Q. Okay.

8 A. **June, actually. I think it was June 1st.**

9 Q. Family's intact, everyone's there;

10 correct?

11 A. **Correct.**

12 Q. And how long did you live at 36 Darwin

13 Street?

14 A. **Well, we had -- we rented that even when**

15 **we were in Hawaii. We were in Hawaii from September**

16 **of '14 to December of '14. We still had the house**

17 **in -- you know, on Darwin Street, but we were in**

18 **Hawaii for those three months.**

19 Q. Prior to moving from South Landing to

20 Darwin Street, did you and your husband come up with a

21 residential plan?

22 A. **There was -- we were moving forward with**

23 **pursuing this Hawaii thing, and nothing was set in**

24 **stone. It was kind of a "let's try it." It was to be**

25 **three months at a time, initially.**

34

1 DIANE R. MARKHAM - BY MR. MOTT

2 Q. So initially, it was to be three months in

3 New York, three months in Hawaii --

4 A. **Correct.**

5 Q. -- three months in New York, et cetera, et

6 cetera?

7 A. **Correct.**

8 Q. And where did the children go to school?

9 A. **We homeschool.**

10 Q. And you heard Michael testify that there

11 was a purchase of property in the LLC with Vito

12 Potenza in Hawaii; correct?

13 A. **Yes.**

14 Q. And you knew about that?

15 A. **I did.**

16 Q. And that was part of the plan, was it not?

17 A. **Correct.**

18 Q. And that was to function as a home office?

19 A. **It was to function as a place for us to**

20 **live when we were in Hawaii.**

21 Q. And was Michael to practice out of that

22 location, as well?

23 A. **He was to practice at a surgical center,**

24 **yes.**

25 Q. And so, when you -- from September 2014

35

1 DIANE R. MARKHAM - BY MR. MOTT

2 forward, you lived three months in Hawaii and three

3 months in New York?

4 A. **No, we only ended up going to Hawaii**

5 **twice.**

6 Q. When was that?

7 A. **We were in Hawaii from September of 2014**

8 **to December of 2014. And then we were in -- the kids**

9 **and I were in Hawaii from May of 2015 to August of**

10 **2015. That was the only time we lived in Hawaii.**

11 Q. And you filed for divorce on September 1,

12 2015?

13 A. **I did.**

14 Q. Did you advise the Court in any way, shape

15 or form that you had resided with your children in

16 Hawaii from May through August 2015?

17 A. **I did not.**

18 Q. Have you -- did you file what's called a

19 custody -- an "affidavit of custody information,"

20 advising the divorce court as to the periods of

21 residency of your children for the prior three years?

22 A. **I did not.**

23 Q. Did you testify to the residency of your

24 children at the default inquest as to where they lived

25 during the prior three years leading up to

36

1 DIANE R. MARKHAM - BY MR. MOTT

2 September 1, 2015?

3 A. **I don't recall.**

4 Q. Did you testify to anything at the default

5 inquest?

6 A. **I did testify.**

7 MR. INGERSOLL: Off the record for a

8 second.

9 (There was a discussion off the record.)

10 Q. And you were in Hawaii through August of

11 2015 and -- and --

12 A. **We came home on the 5th of August.**

13 Q. The 5th of August, and did not return to

14 Hawaii again?

15 A. **No.**

16 Q. Did you make any application or attempt to

17 qualify yourself as a Hawaiian resident?

18 A. **We pursued receiving the Hawaiian**

19 **residency so we could get discounts at restaurants,**

20 **was the only reason we did the residency thing.**

21 Q. Discount at restaurants?

22 A. **Yeah.**

23 Q. And how do you apply for Hawaiian

24 residency?

25 A. **There was a whole -- you had to provide**

37

1 DIANE R. MARKHAM - BY MR. MOTT  
 2 **your social security number and prove where you lived.**  
 3 **You had to claim you were going to be there half the**  
 4 **year; though it was understood by the defendant, or by**  
 5 **Michael and I that, you know, we weren't sure,**  
 6 **exactly, if we'd be there half the year.**  
 7 Q. You weren't sure?  
 8 A. **No. It was still very much in the**  
 9 **infancy, the Hawaii thing. Like I said, we only went**  
 10 **two times.**  
 11 Q. Was the plan to eventually increase the  
 12 length of --  
 13 A. **There was no plan, because it was after**  
 14 **the first time we there that he was fired -- or, you**  
 15 **know, let go at the hospital.**  
 16 Q. When did you apply for your Hawaiian  
 17 residency?  
 18 A. **I don't remember.**  
 19 Q. Was it during the period May through  
 20 August 2015?  
 21 A. **I'm not sure if it was the first time or**  
 22 **the second time.**  
 23 Q. And did you fill out a form and --  
 24 A. **Yep.**  
 25 Q. And did you represent to the state of

38

1 DIANE R. MARKHAM - BY MR. MOTT  
 2 Hawaii that you would be there six months or more  
 3 every year?  
 4 A. **I do believe that that's what we were**  
 5 **intending to say, yeah.**  
 6 Q. Did you qualify for your Hawaiian  
 7 residency?  
 8 A. **I did, yeah.**  
 9 Q. And in turn, did you make any effort to  
 10 qualify your children as Hawaiian residents?  
 11 A. **I do believe we got the boys their**  
 12 **residencies; but Rory's, we never did.**  
 13 Q. Because?  
 14 A. **We didn't have the proper paperwork.**  
 15 Q. Did Michael --  
 16 A. **She was -- there was different rules for**  
 17 **her age that -- what you needed.**  
 18 Q. I see. How about Michael? Did he get his  
 19 Hawaiian residency?  
 20 A. **I believe so.**  
 21 Q. Did you make a note to the divorce court  
 22 that you had obtained Hawaiian residency?  
 23 A. **No, because the residency was for**  
 24 **discounts.**  
 25 Q. Did you get a card?

39

1 DIANE R. MARKHAM - BY MR. MOTT  
 2 A. **Yeah.**  
 3 Q. And what did it say on the card?  
 4 A. **I don't remember.**  
 5 Q. Do you still have your Hawaiian residency?  
 6 A. **No, I don't.**  
 7 Q. What did you do with it?  
 8 A. **I think I threw it away. It was to get**  
 9 **discounts at restaurants.**  
 10 Q. I understand. I heard you three times --  
 11 A. **It wasn't like we were --**  
 12 Q. I get it. I heard what you said.  
 13 A. **It was kind of fun to have.**  
 14 Q. Yeah. I get it. But it said you were an  
 15 official Hawaiian resident, did it not?  
 16 A. **Yeah.**  
 17 Q. Yeah. And it had your photo ID on it?  
 18 A. **Yeah.**  
 19 Q. So you had it, Michael had one, and the  
 20 two oldest children?  
 21 A. **I believe so, yeah.**  
 22 Q. When the lawsuit for divorce started, was  
 23 Michael residing with you?  
 24 A. **Yes.**  
 25 Q. And how long -- where were you residing

40

1 DIANE R. MARKHAM - BY MR. MOTT  
 2 together?  
 3 A. **We were on Darwin Street.**  
 4 Q. On September 1, 2015, you were at Darwin  
 5 Street?  
 6 A. **Yep.**  
 7 Q. And this is a half a house?  
 8 A. **Correct.**  
 9 Q. The children, of course, were there;  
 10 right?  
 11 A. **Yep. Yes.**  
 12 Q. Did there come a time when Michael was  
 13 ordered out of Darwin Street?  
 14 A. **Yes.**  
 15 Q. Do you remember when that was?  
 16 A. **It was in December of 2015.**  
 17 Q. And do you know how that came about?  
 18 A. **The children had, you know, been**  
 19 **expressing to their law -- their AFC the extreme**  
 20 **discomfort of having us in the same house and that it**  
 21 **was a toxic environment for them to live in.**  
 22 Q. And was there any physical violence?  
 23 A. **There was no physical violence, no.**  
 24 Q. Was there any threats of violence?  
 25 A. **Not physical, no.**

41

1 DIANE R. MARKHAM - BY MR. MOTT

2 Q. So you say that Michael was excluded from

3 Darwin Street in December of 2015?

4 A. **Yep.**

5 Q. Was that by court order?

6 A. **Correct.**

7 Q. Was there an order of protection?

8 A. **I'm not sure.**

9 Q. Was there a hearing in court?

10 A. **I don't remember.**

11 MR. INGERSOLL: Did you testify?

12 THE WITNESS: No, I -- I think it was the

13 AFC. It was Lisa and the kids.

14 Q. Do you know if Judge Fisher, who had the

15 case at the time, issued an order ordering Michael out

16 of the house before a court appearance?

17 A. **I don't remember.**

18 Q. But you do recall there was no testimony

19 given in court at any time by you or Michael?

20 A. **I don't remember.**

21 Q. And did Michael have someplace to live in

22 New York State?

23 A. **He could stay with his mother.**

24 Q. And where does she live?

25 A. **In Brockport.**

42

1 DIANE R. MARKHAM - BY MR. MOTT

2 Q. Do you know if he did?

3 A. **I don't know what he did for a fact.**

4 Q. Did he have visitation?

5 A. **He did.**

6 Q. Did he exercise it?

7 A. **He did.**

8 Q. And did there come a time when his

9 visitation was terminated also?

10 A. **There was a time where it was terminated**

11 **with Rowan.**

12 Q. Anyone else?

13 A. **No, it was never terminated with Rory. He**

14 **left.**

15 Q. Was there a time when Judge Fisher issued

16 a no contact order between Michael and all the

17 children?

18 A. **There was.**

19 Q. When was that?

20 A. **I think with the judgment of divorce.**

21 Q. But not prior to the judgment?

22 A. **I can't say for certain. There was a lot**

23 **of documents flying back and forth. I wouldn't be**

24 **able to say for sure.**

25 Q. Let me ask you a very general question.

43

1 DIANE R. MARKHAM - BY MR. MOTT

2 Did you ever testify in open court?

3 A. **I did.**

4 Q. When?

5 A. **At the judgment of divorce.**

6 Q. The default inquest?

7 A. **At default trial.**

8 Q. November of 2016?

9 A. **Correct.**

10 Q. And Mark Bezinque was your attorney?

11 A. **Correct.**

12 Q. Judge Fisher was the judge in charge of

13 the case?

14 A. **Correct.**

15 Q. And Michael Markham was not there and no

16 attorney was there for him?

17 A. **Correct.**

18 Q. Okay. Was there ever any other time that

19 you can recall that you were asked to testify other

20 than the default inquest?

21 A. **No. I know the kids testified to the**

22 **judge. The kids did on camera.**

23 Q. How was Michael's medical school education

24 paid for? Did somebody give him money, his mother

25 or --

44

1 DIANE R. MARKHAM - BY MR. MOTT

2 A. **No.**

3 Q. Did you pay for it?

4 A. **There was loans.**

5 Q. Loans?

6 A. **But we paid them back.**

7 Q. Did Michael pay the loans back with his

8 earnings?

9 A. **Well, I wasn't working, so the family's**

10 **earnings paid back his medical school.**

11 Q. Otherwise known as Michael's salary; fair

12 to say?

13 MR. INGERSOLL: It is what it is.

14 A. **I guess since I wasn't paid for my job,**

15 **yes.**

16 Q. Right. Prior to September 1, 2015, did

17 Michael Markham participate in any activities with any

18 of the children?

19 A. **Prior to September of 2015?**

20 Q. Yes.

21 A. **In general? No.**

22 Q. No?

23 A. **No.**

24 Q. What kind of activities, prior to

25 September 1, 2015, did your three children participate

45

1 DIANE R. MARKHAM - BY MR. MOTT  
 2 in?  
 3 A. **Well, they're homeschooled; and Rowan**  
 4 **played tennis; and Rory at the time, I believe, was**  
 5 **doing Irish dance and gymnastics. I mean, it changes.**  
 6 **The kids' activities change throughout a period of**  
 7 **time. You're talking about a lengthy period of time**  
 8 **there, prior to 2015.**  
 9 Q. Bicycle trips?  
 10 A. **There were occasional bicycle trips, yes.**  
 11 Q. Did Michael participate?  
 12 A. **Yes, that was probably the only time that**  
 13 **he really spent time with the kids, was on the bicycle**  
 14 **trips, once a year.**  
 15 Q. Prior to --  
 16 A. **Not every year, but...**  
 17 Q. Okay. Did Michael work long hours?  
 18 A. **Yes.**  
 19 Q. Did he work weekends?  
 20 A. **Yes.**  
 21 Q. Nights?  
 22 A. **Yes.**  
 23 Q. How many hours during weekdays did he  
 24 work?  
 25 A. **I couldn't say for sure, anywhere between**

46

1 DIANE R. MARKHAM - BY MR. MOTT  
 2 **40 and 70.**  
 3 Q. And prior to this whole divorce thing, how  
 4 would you describe Michael's relationship with his  
 5 three children?  
 6 A. **That's a hard thing to summarize.**  
 7 Q. Well, did they love him?  
 8 A. **That's a hard --**  
 9 Q. I know it's a subjective --  
 10 A. **Yeah.**  
 11 Q. Did they express love to their father?  
 12 A. **He was there. You know, they knew he**  
 13 **worked hard so we could be where we were. But their**  
 14 **relationship -- each kid's different.**  
 15 Q. Did Michael --  
 16 A. **He wasn't home much to have much of a**  
 17 **relationship with the kids.**  
 18 Q. Because of his job hours?  
 19 A. **Correct, and because of his choice to work**  
 20 **as much as he did.**  
 21 Q. It was his choice to work as much? Did  
 22 you encourage him to work less?  
 23 A. **Yes, frequently.**  
 24 Q. Then you would have less money to live on;  
 25 right?

47

1 DIANE R. MARKHAM - BY MR. MOTT  
 2 A. **I didn't even want to move to the house on**  
 3 **South Landing. I wanted to stay at our small house in**  
 4 **Brockport.**  
 5 Q. Did Michael express love and affection for  
 6 his children when he was around?  
 7 A. **Sometimes.**  
 8 Q. Would you say he was a good father?  
 9 A. **No.**  
 10 Q. Why not?  
 11 A. **Because he was disengaged, at least for**  
 12 **the last 10 years.**  
 13 Q. Disengaged in the sense of --  
 14 A. **When he was home, he just was -- he'd eat**  
 15 **dinner sometimes with us, and then he'd be in his**  
 16 **room. He was rarely a part of the family, except on**  
 17 **those bike trips.**  
 18 Q. Take vacations as a family?  
 19 A. **We did take some vacations as a family,**  
 20 **yes.**  
 21 Q. Did Michael participate in the  
 22 homeschooling at all?  
 23 A. **Not really, no.**  
 24 Q. How did the children like living in Hawaii  
 25 part of the time?

48

1 DIANE R. MARKHAM - BY MR. MOTT  
 2 A. **Some of them liked it, some of them did**  
 3 **not like it.**  
 4 Q. With respect to Aidan's college education,  
 5 you heard Michael testify that both of you paid for  
 6 your own college educations. Is that accurate?  
 7 A. **Well, my parents helped me some, but yeah.**  
 8 Q. Did you and Michael agree that Aidan  
 9 should pay for his college?  
 10 A. **No.**  
 11 Q. No? Did you think you and Michael should  
 12 pay for it?  
 13 A. **My feeling on it was that we should**  
 14 **offer -- we should be able to pay for at least half of**  
 15 **it.**  
 16 Q. And was -- were 529 funds used for Aidan's  
 17 education?  
 18 A. **The first year.**  
 19 Q. How much was that?  
 20 A. **Around 40,000.**  
 21 Q. And you heard Michael testify that Aidan  
 22 had a full ride to Utah?  
 23 A. **That's not true.**  
 24 Q. That's not true? Did he have any offer  
 25 from Utah?

49

1 DIANE R. MARKHAM - BY MR. MOTT

2 A. **No. I mean, he was accepted at Utah.**

3 **Their tuition's much cheaper. It's a state school.**

4 Q. So he was not offered any scholarship to

5 your knowledge?

6 A. **No, because we -- no. Scholarships aren't**

7 **really determined until after you accept, and then --**

8 **so no.**

9 Q. But it was a lot cheaper than RIT?

10 A. **It was, and we were -- and part of the**

11 **discussion was it was cheaper tuition, but the**

12 **transporting back and forth would have potentially**

13 **eaten up the difference in savings.**

14 Q. Did you and Michael agree that everything

15 over the cost of a SUNY education should be borne by

16 Aidan?

17 A. **I don't recall there being such a specific**

18 **description of any agreement.**

19 Q. In your net worth statement, you have a

20 small retirement fund?

21 A. **There was \$4,000 in my retirement fund**

22 **because we only funded his.**

23 Q. Yeah. Okay. It's an IRA; correct?

24 A. **It was.**

25 Q. Is it used up?

50

1 DIANE R. MARKHAM - BY MR. MOTT

2 A. **It's -- I transferred it into the account**

3 **that I put the other money that I got in from the SEP**

4 **IRA.**

5 Q. What account is that?

6 A. **It's a new account. I opened a new IRA in**

7 **a different --**

8 Q. Oh. So you still have an IRA?

9 A. **I do.**

10 Q. How much is there now?

11 A. **About 140.**

12 Q. Thousand?

13 A. **Yeah.**

14 Q. And that includes some of Michael's SEP --

15 how much of that comes from your prior IRA?

16 A. **Four.**

17 Q. Okay. And that's at Scottrade; right?

18 A. **No, it's not anymore at Scottrade.**

19 Q. Where is it?

20 A. **I'd have to look at the statement to know**

21 **the name of the bank.**

22 Q. Do you draw upon it?

23 A. **I have, yeah.**

24 Q. During the year 2017, how much have you

25 drawn out?

51

1 DIANE R. MARKHAM - BY MR. MOTT

2 A. **50 to \$60,000.**

3 Q. How about during -- well, you didn't draw

4 anything out in 2016.

5 And what did you do with the 50 to

6 \$60,000?

7 A. **I paid attorneys and used it as living**

8 **expenses.**

9 Q. How much did you pay for attorney's fees?

10 A. **Without looking at my chart, I couldn't**

11 **say, exactly.**

12 Q. More than 20?

13 A. **Yes.**

14 Q. More than 30, if you know?

15 A. **I don't know, exactly.**

16 Q. Would you provide me with some

17 documentation?

18 A. **I did. I mean I have that. That was in**

19 **the stuff I sent.**

20 Q. So that's all --

21 MR. INGERSOLL: I think my retainer

22 agreement is attached to the statement of net worth.

23 MR. MOTT: Yeah. I'm just asking her how

24 much of that was SEP IRA money.

25 Q. Have you received any other money from

52

1 DIANE R. MARKHAM - BY MR. MOTT

2 anyone else during the year 2017?

3 A. **I'm trying to remember if anybody's loaned**

4 **me money. I got some loans from friends for starting**

5 **up the business, but I -- exactly when that came in,**

6 **without looking at my bank statements, it's hard to**

7 **remember, exactly.**

8 Q. So you got some startup money from friends

9 in the form of loans?

10 A. **Friends gave me money.**

11 Q. Gift?

12 A. **Not clearly established. To be paid back,**

13 **if I can.**

14 Q. Anything in writing?

15 A. **No.**

16 Q. How much did your friends give you?

17 A. **Over just in 2017?**

18 Q. Yes.

19 A. **Maybe \$5,000.**

20 Q. Was that used for your business?

21 A. **Yeah.**

22 Q. How about in 2016? Anyone give you money?

23 A. **Yeah, I had lots of people giving me**

24 **money.**

25 Q. How much?

53

1 DIANE R. MARKHAM - BY MR. MOTT

2 A. **I don't know.**

3 Q. More than 10?

4 A. **Probably.**

5 Q. Were these gifts?

6 A. **It was the understanding that, if I can**

7 **pay them back, I should and I will.**

8 Q. Any money in 2015?

9 A. **Yeah.**

10 Q. How much?

11 A. **I don't remember, exactly.**

12 Q. Same arrangement?

13 A. **Yes.**

14 Q. Did you pay income taxes on the money that

15 you withdrew from Michael's SEP IRA in December of

16 2016?

17 A. **Yeah, I presume I did.**

18 Q. And where did you --

19 A. **You have a copy of my taxes.**

20 Q. Yeah. And where did you get the money for

21 the taxes?

22 A. **I was given large -- my refund covered**

23 **anything I owed.**

24 Q. Your refund covered everything you owed?

25 A. **Well, I didn't pay taxes on anything that**

54

1 DIANE R. MARKHAM - BY MR. MOTT

2 **went right into the IRA, though. Is that what you're**

3 **asking?**

4 Q. Well, to the extent you took money out.

5 A. **Oh. Yeah. You mean this year?**

6 Q. Well, 20 -- yeah.

7 A. **I only got that, yeah.**

8 Q. That was the direct transfer from one IRA

9 to another?

10 A. **Correct.**

11 MR. INGERSOLL: Just to be clear, you said

12 2015 the first time. That's why she said "no."

13 MR. MOTT: Thanks.

14 MR. INGERSOLL: No problem.

15 Q. Michael Markham was asked questions about

16 life insurance policies on your children's lives. Are

17 you aware of any policies on the children's lives?

18 A. **Yeah, we had life insurance policies on**

19 **all three children.**

20 Q. Do you know what the death benefit was?

21 A. **He handled that.**

22 Q. Do you know the name of the company?

23 A. **Northwestern Mutual, David Urban was**

24 **the...**

25 Q. Do you know if these policies still exist?

55

1 DIANE R. MARKHAM - BY MR. MOTT

2 A. **I don't know. He won't talk to me. He**

3 **won't will give me no information, Dave Urban, because**

4 **all the accounts are in Michael's name. So I know**

5 **nothing about them.**

6 Q. Same thing with respect to the Guardian

7 policies that he testified to, the policies on

8 Michael's life?

9 A. **Yeah. Yeah. My name's not on any of that**

10 **stuff, so I can't get any of that information.**

11 MR. INGERSOLL: Perhaps you can, Mr. Mott.

12 MR. MOTT: Perhaps.

13 MR. INGERSOLL: That will be helpful.

14 Q. Do you know if Michael Markham paid some

15 amount of attorney's fees to Mark Bezinque?

16 A. **He did not pay any attorney's fees to Mark**

17 **Bezinque.**

18 Q. None?

19 A. **None. I mean, the money Mark Bezinque**

20 **received was from joint checking accounts that I paid**

21 **Mark Bezinque with a check.**

22 Q. ES&L?

23 A. **Yeah.**

24 Q. And what was the source of the funds at

25 ESL --

56

1 DIANE R. MARKHAM - BY MR. MOTT

2 A. **Our marital funds.**

3 Q. Well, would that have been Michael's

4 earnings?

5 A. **I guess so.**

6 Q. So Michael put his earnings into a joint

7 ESL account; correct?

8 A. **Well, at that point, he wasn't even making**

9 **any earnings. It was disability money or whatever we**

10 **had left from savings.**

11 Q. I'm just trying to figure out --

12 A. **I mean, it's money, the content of those**

13 **accounts.**

14 Q. Prior to September 1, 2015, you hired Mark

15 Bezinque?

16 A. **Right.**

17 Q. And he asked for a retainer fee of how

18 much?

19 A. **The retainer fee was paid with money I**

20 **borrowed from my brother-in-law.**

21 Q. How much was it?

22 A. **\$5,000.**

23 Q. Do you have a promissory note or some

24 document indicating you owe your brother?

25 A. **No.**

57

1 DIANE R. MARKHAM - BY MR. MOTT

2 Q. And subsequent to that initial retainer

3 payment that you got, whatever, from your brother, did

4 you make any other payments, you, to Mark Bezinque's

5 business for his attorney's fees?

6 A. I did.

7 Q. How many?

8 A. I don't remember exactly without looking.

9 Q. And you wrote the checks -- and these were

10 checks, no doubt?

11 A. Correct.

12 Q. From joint ES&L account?

13 A. I believe so.

14 Q. In the year 2015?

15 A. Yes, I believe so.

16 Q. In the year 2016?

17 A. No. No, because -- yeah, no.

18 Q. And the source of funds, was Michael's

19 disability payments going into that joint account?

20 A. Whatever was the money, the source of the

21 funds from the money. It would have been leftover

22 savings, would have been -- I can't say, exactly,

23 where the money came from the joint accounts.

24 Q. Well, where could it have come from?

25 A. We'd mortgaged money on the house in

58

1 DIANE R. MARKHAM - BY MR. MOTT

2 Hawaii, so there was funds from that. So I don't

3 know.

4 Q. What do you mean you mortgaged money on

5 the house?

6 A. When we bought the house in Paia, the

7 Hoku Place, the mortgage that was taken out on that,

8 we received money from that mortgage. And the details

9 of how that was all -- I didn't have anything to do

10 with that.

11 Q. Do you have any idea of how much?

12 A. No.

13 Q. And you're saying that mortgage money from

14 the Hawaiian purchase of Hoku -- I think it's Hoku; is

15 that right?

16 A. Hoku, yeah.

17 Q. -- was in part deposited into an ESL joint

18 savings account?

19 A. I don't remember, exactly, what happened

20 with the money.

21 Q. So in addition to whatever you paid Mark

22 Bezinque, Mark Bezinque also kept the lion's share of

23 the seizer funds?

24 A. Yeah, because I owed him.

25 Q. Do you know when your husband, Michael,

59

1 DIANE R. MARKHAM - BY MR. MOTT

2 was first diagnosed as disabled?

3 A. Do I know exactly when? No.

4 Q. Do you know when he stopped working?

5 A. In April of 2015, March or April.

6 Q. And did you have a conversation with him

7 about why he stopped working?

8 A. Yeah.

9 Q. Can you tell me the substance of that

10 conversation?

11 A. He said that his partners realized that he

12 had been stealing fentanyl, and he was injecting

13 himself with it. So they gave him an opportunity to

14 go to rehab to take care of his drug addiction.

15 Q. And did he?

16 A. Yeah, he went to rehab. I don't know if

17 he took care of his drug addiction.

18 Q. And was that Talbott?

19 A. Yes.

20 Q. T-A-L-B-O-T [sic]?

21 A. Correct.

22 Q. And that's in Atlanta?

23 A. Correct.

24 Q. And how long was he there?

25 A. He was there from April through July.

60

1 DIANE R. MARKHAM - BY MR. MOTT

2 Q. Of 2015?

3 A. Correct.

4 Q. And do you know when he began receiving

5 his disability checks?

6 A. I believe it was in June of 2015.

7 Q. And do you know what account those checks

8 were going into?

9 A. To one of the ESL accounts.

10 Q. In joint names?

11 A. I don't remember. There was a joint one

12 and there was one that was just in his name.

13 Q. Did you ever speak to any of Michael's

14 doctors with respect to the diagnosis of his

15 disability?

16 A. I had a conversation with one of his

17 doctors; though, I don't remember the person's name.

18 Q. What were you told about his disability?

19 A. I was told that he -- I was told that he

20 was -- had an extreme addiction to fentanyl, that it

21 took a very long time to wean him off the maintenance

22 drugs, and that he had severe anxiety and severe

23 depression, and there was narcissistic tendencies, is

24 what she told me. It was a short conversation, maybe

25 a half an hour. That was a long time ago.



61

1 DIANE R. MARKHAM - BY MR. MOTT  
 2 Q. And when did he get out of Talbott?  
 3 A. **July 2015.**  
 4 Q. And then he returned to the family home,  
 5 Darwin Street?  
 6 A. **He did. He went there, and then he flew**  
 7 **out to Hawaii.**  
 8 Q. You were in Hawaii?  
 9 A. **We were in Hawaii.**  
 10 Q. And you flew back together?  
 11 A. **No.**  
 12 Q. Separately?  
 13 A. **Yes.**  
 14 Q. And you came back early August?  
 15 A. **Yes.**  
 16 Q. And then he came back when?  
 17 A. **Before us.**  
 18 Q. Late July?  
 19 A. **Something like that.**  
 20 Q. So he's released from Talbott; he flies to  
 21 Hawaii in July?  
 22 A. **He went to Rochester, and then he flew to**  
 23 **Hawaii.**  
 24 Q. Okay. All right. And then you filed for  
 25 divorce September 1, 2015?

62

1 DIANE R. MARKHAM - BY MR. MOTT  
 2 A. **Correct.**  
 3 Q. Did you discuss with Michael prior to  
 4 filing that you were going to file for divorce?  
 5 A. **Yes, we had conversations about...**  
 6 Q. Did you discuss with Michael any  
 7 arrangements the two of you might agree upon with  
 8 respect to your children?  
 9 A. **No, there was really not much discussing**  
 10 **anything with him at that point. He was extremely**  
 11 **erratic and volatile.**  
 12 Q. Have you discussed with your children any  
 13 aspects of this divorce case?  
 14 A. **Only in the effects that it affects them**  
 15 **as far as monetary, when I tell them we can't do stuff**  
 16 **because I can't afford it.**  
 17 Q. Well, have you discussed with your  
 18 children issues of child support?  
 19 A. **They know that -- I mean, Ed told them**  
 20 **that they're getting payment now. I mean, define**  
 21 **when.**  
 22 Q. Starting September 1 through the time that  
 23 you -- through the end of December 2016.  
 24 A. **Uh-huh.**  
 25 Q. During that period of time, did you

63

1 DIANE R. MARKHAM - BY MR. MOTT  
 2 discuss child support payments with your children?  
 3 A. **No.**  
 4 Q. Did you discuss anything monetarily with  
 5 your children?  
 6 A. **No.**  
 7 Q. How do they know that you weren't getting  
 8 child support?  
 9 A. **Because we had to move.**  
 10 Q. And did you tell the children we had to  
 11 move because you weren't getting child support?  
 12 A. **I told the children we had to move because**  
 13 **I had no money. We needed to find a cheaper place to**  
 14 **live. What I was making didn't support us.**  
 15 Q. And did you mention the money that had  
 16 been seized from the accounts to your children?  
 17 A. **Not specifically. The details of all**  
 18 **that, no, they don't know all the details.**  
 19 Q. Did you mention the money you got from the  
 20 SEP IRA to your children?  
 21 A. **I --**  
 22 MR. INGERSOLL: I think she answered she  
 23 didn't discuss the details with her children.  
 24 Q. Did you tell the children there was a no  
 25 contact order after that was granted by Judge Fisher?

64

1 DIANE R. MARKHAM - BY MR. MOTT  
 2 A. **I think so, yeah. I think they knew that.**  
 3 **It directly affected them. So yeah, I would have told**  
 4 **them that.**  
 5 Q. During the period September -- strike  
 6 that.  
 7 During the period November -- strike that.  
 8 During the period September 1, 2015, and  
 9 December 30, 2016, did Michael make any attempt to  
 10 contact the children?  
 11 A. **Tell me the years again?**  
 12 Q. September 1, 2015, the day you started the  
 13 lawsuit for divorce, through December 31, 2016.  
 14 A. **Well, he had visitation.**  
 15 Q. Up until November of 2016, when you got a  
 16 no contact order; correct?  
 17 A. **No, he had visitation with the kids**  
 18 **through -- he had visitation with both kids through**  
 19 **March of 2016. Then the visitation with Rowan was**  
 20 **ceased. And then he continued visitation with Rory,**  
 21 **that he didn't follow through on because he moved back**  
 22 **to Hawaii.**  
 23 Q. Did Michael contact the children, e-mail,  
 24 text, phone, from September 2015 through December  
 25 2016?

1 DIANE R. MARKHAM - BY MR. MOTT  
 2 A. Well, yeah.  
 3 Q. Did he have contact with them?  
 4 A. Yeah, he still had visitation during that  
 5 time period. You're talking about a year and a half;  
 6 right?  
 7 Q. Right. Yeah.  
 8 A. Okay. So while he still had visitation,  
 9 obviously, he was in communication with them. And he  
 10 had communication with Rory until she blocked him from  
 11 his phone -- her phone, when she received a text that  
 12 upset her from him.  
 13 Q. Did you speak to Michael during that  
 14 period of time with respect to communications with the  
 15 children?  
 16 A. No, our -- we -- no.  
 17 Q. Did you have any correspondence or any  
 18 communications during that time?  
 19 A. No, he was off the grid. He wasn't  
 20 communicating with anybody. Or I didn't even know  
 21 where he was living.  
 22 Q. Did you encourage the children to contact  
 23 their father during that period of time?  
 24 A. During which period of time?  
 25 Q. September 1, '15, through December 31,

1 DIANE R. MARKHAM - BY MR. MOTT  
 2 Q. So Analise did not forward them onto the  
 3 children?  
 4 A. No, she did not. But there was a no  
 5 contact order at that time. According to her, it was  
 6 just cards and -- it was just a card, from what I  
 7 recall.  
 8 Q. Do you have a leased vehicle?  
 9 A. I do.  
 10 Q. When did you lease it?  
 11 A. In August of 2015.  
 12 Q. And how many months?  
 13 A. Three years, I think. I still have it.  
 14 Q. Okay. What's the lease payment?  
 15 A. 265.  
 16 Q. What kind of car is it?  
 17 A. A Honda Accord.  
 18 Q. Did you fill out an application for  
 19 obtaining the lease?  
 20 A. Yeah, I guess. I don't -- I mean, it was  
 21 at Honda. There's really not an application. I mean,  
 22 I guess there is, but the guy does it for you.  
 23 Q. And what did you tell them your income was  
 24 back then?  
 25 A. My Wisteria income, and we were putting me

1 DIANE R. MARKHAM - BY MR. MOTT  
 2 '16.  
 3 A. I encouraged the children to be in contact  
 4 with their father during their visitations.  
 5 Q. Did Michael send any cards or gifts to the  
 6 children from September 1, 2015, through the present?  
 7 A. Not to my house, not to where we were  
 8 living.  
 9 Q. Well, to someplace else?  
 10 A. He sent Valentine's Day cards to my oldest  
 11 child. But that was in February of 2017.  
 12 Q. This year?  
 13 A. Yes. So that was after the no contact  
 14 order.  
 15 Q. He sent them where?  
 16 A. To my oldest daughter's house.  
 17 Q. Oldest daughter? Who's that?  
 18 A. Analise. She's not his child.  
 19 Q. Oh. That's from a prior marriage?  
 20 A. Uh-huh.  
 21 Q. And was it a card --  
 22 A. I don't know. I didn't see them. She  
 23 took care of that. She opened them and decided that  
 24 it was not in the children's interest to move them  
 25 forward.

1 DIANE R. MARKHAM - BY MR. MOTT  
 2 as an employee of the Valley Isle. I don't know. We  
 3 fudged it, I gather. He was with me.  
 4 Q. When was this?  
 5 A. August of 2016 -- '15.  
 6 Q. Okay. So right before the divorce action,  
 7 you and Michael went to the Honda dealership to lease  
 8 your vehicle?  
 9 A. Right, because I didn't have a car at that  
 10 time. My leased vehicle was in an accident and was  
 11 totaled out, so I didn't have any transportation.  
 12 Q. Do you recall what you put on your  
 13 application as the amount of your income?  
 14 A. I don't remember. I have no recollection  
 15 of that.  
 16 Q. But you claimed to be an employee of  
 17 Wisteria and Valley Isle?  
 18 A. I forget, exactly. I couldn't say for  
 19 certain what I claimed as my income on that car.  
 20 Q. Was it accurate?  
 21 A. I doubt it.  
 22 Q. At the time this lawsuit for divorce was  
 23 started, the assets were property in Hawaii; correct?  
 24 A. Yes.  
 25 Q. Your small IRA?

69

1 DIANE R. MARKHAM - BY MR. MOTT

2 A. Yes.

3 Q. Michael's SEP IRA?

4 A. Yes.

5 Q. Anything else?

6 A. The 529s.

7 Q. Anything else?

8 A. No. There was the money at the ESL that

9 was probably less than -- I mean, there was money in

10 those accounts at the commencement of the divorce,

11 yes.

12 Q. How much?

13 A. I couldn't say for certain.

14 Q. Less than 10,000?

15 A. No, more than that.

16 Q. Did you have any -- besides the Hawaiian

17 mortgage on the day the lawsuit started, was there any

18 other outstanding debts, credit card debts, personal

19 loans, home equity loans?

20 A. No, I don't believe so.

21 MR. MOTT: Thank you.

22 (TIME: 1:27 p.m.)

23 \* \* \*

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70

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2 WITNESS

3 Name	4 Examination by	5 Page
6 Diane R. Markham	7 Mr. Mott	8 4-69

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2 EXHIBITS

3 Exhibit	4 Description	5 Marked
6 EXH	7 (No Exhibits Marked)	8 * * *

9 EXHIBITS PREVIOUSLY MARKED

10 Exhibit	11 Description	12 Page
13 EXH	14 (No Previously Marked Exhibits Presented)	15 * * *

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72

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2 DOCUMENT REQUESTS

3 Request	4 Page
5 Rory's earnings at ZHAD in 2017 (Mr. Mott)	6 8
7 2017 W-2s for ZHAG employees (Mr. Mott)	8 13
9 Diane Markham's social security statement of	10 benefits (Mr. Mott)
	11 14

12 \* \* \*

13 CERTIFIED QUESTIONS

14 Question	15 Page
16 (No Certified Questions)	17 * * *

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CERTIFICATION

STATE OF NEW YORK:  
COUNTY OF GENESEE:

I, LAUREN E. SHERWOOD, do hereby certify that I reported in machine shorthand the above-styled cause; and that the foregoing pages were typed by computer-assisted transcription under my personal supervision and constitute a true record of the testimony in this proceeding;

I further certify that I am not an attorney or counsel of any parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action;

WITNESS my hand in the City of Batavia, County of Genesee, State of New York.



\_\_\_\_\_  
LAUREN E. SHERWOOD  
Freelance Court Reporter and  
Notary Public No. 01SH6252644  
in and for Genesee County, New York