

Testimony of

The Honorable Annette M. Rizzo

October 24, 2008

TESTIMONY OF THE HONORABLE ANNETTE M. RIZZO

COURT OF COMMON PLEAS, FIRST JUDICIAL DISTRICT

OF PENNSYLVANIA BEFORE

THE UNITED STATES SENATE JUDICIARY COMMITTEE

The Honorable Arlen Specter

The Honorable Robert C. Casey, ex-officio

October 24, 2008

"Build It and They Will Come!"

Senator Specter, Senator Casey, Councilman Jones, elected officials, judicial colleagues and distinguished members of the bar & community-

Special thanks to you, Senator Specter and Senator Casey for bringing to the forefront our actions in Philadelphia to stem the burgeoning rise of residential foreclosures in our local community-our efforts here have been publicized in a variety of media outlets which span the country and even the world.(Just yesterday Swedish National TV was in the courtroom during our session) Requests have come in from numerous jurisdictions within the Commonwealth and across the country which see us as a "national model" for early and direct resolution of foreclosure matters.

Senator Specter and Senator Casey-our mission here in Philadelphia is simple-early intervention in the legal path to foreclosure and ultimate sale of owner-occupied residences with the hope that homes may be saved-one address at a time!

First and foremost I want to share with you what the First Judicial District's Pilot Mortgage Foreclosure Diversionary Program is NOT about-it is NOT about entitlements, give aways, support of delay tactics, unwarranted breaks, abuse of the legal system, coercion to make deals or the abrogation of legal rights. It IS about setting the stage to promote good faith negotiations for parties to come to the table responsibly with the hope of borrowers remaining in their homes.

Our program was established in the Spring of this year in response to our Sheriff, John Green, canceling the entire Sheriff's Sale List in April of this year, 2008. His actions came on the heels of our City Council passing a Resolution to request of the Sheriff and our President Judge, C. Darnell Jones, to declare a moratorium on residential sales. In quick response Judges Jones and Webster Keogh, our Administrative Judge for the Trial Division, took affirmative action by establishing our present Program. To understand what we are now in the present-one has to understand what we were in the past!

The true genesis of our current program, which became fully operational in just seven (7) weeks, actually began in 2004. At that time Sheriff Green had canceled the Sheriff's Sale list as well and had come before the Court to seek injunctive relief by way of a moratorium of sales. The matter was before me and though I did not grant the relief then sought, I did establish what would amount to be the prototype of the program we now have--taking time to look at cases/homeowner situations on a micro basis and foster the opportunity for the lenders and homeowners, through counsel, to negotiate favorable resolutions. Success was seen with many of the homeowners based on newly available state funding criteria-through HEMAP, however another significant result came from those proceedings.

The Sheriff at that time, argued to the Court that the Sheriff Sales system was "fundamentally broken" and needed to be fixed-I challenged him and the consumer and lender bar to work together to "fix it"! Such was the birth of the Mortgage Foreclosure Steering Committee which has been in force for some four years. During that time, meeting on a monthly or bi-monthly basis, the group has come together to tackle several procedural "fixes" to the local foreclosure process. Though the Committee members are advocates on opposing sides of the issues-they came together to make the process work- such as working on reduction of advertising costs for homeowners in the process, among other projects.

Now fast forwarding to 2008 this group was primed to face the present challenges and move swiftly to form our Diversionary Program. It is chaired by counsel to the Sheriff-Lesia Kuzma with stakeholder members on all sides of the issue along with representatives from the City's Office of Housing and Community Development, Housing Counseling Agencies, the Sheriff's Office, the Philadelphia Bar Association and other related community outreach groups some of whom are present here and I would ask they stand-the full Committee is listed in the Program's materials and I never miss an opportunity to openly applaud their ongoing efforts.

There exist two (2) major criteria of the Program-

1. The only cases eligible for the Program must involve Residential/Owner-Occupied Properties; and,
2. NO such property can go to Sheriff's Sale in Philadelphia without a "Conciliation Conference".

With respect to the "Day Forward" part of the Program, at the filing and service of a "Complaint in Foreclosure" upon the homeowner, "NOTICE" is given of a scheduled, mandatory conciliation conference. The Notice provides for the homeowner to call the "Save Your Home Hotline" to schedule an appointment with a Housing Counselor in preparation for the conference- homework must be done to make the discussions fruitful.

With early intervention the goal is to reach homeowners who have not abandoned the properties out of hopelessness, and therefore will be maintaining the properties in better physical condition, subject to less arrearage with their mortgages, taxes, utilities, etc.

The Court made a tactical decision to create a "Day Backward" Program reaching back to literally pull homes off of the Sale block- aged and difficult cases where judgment against the homeowners had already been entered. In long discussion with our President Judge Jones we took the leap to attempt to save these homes from the gavel- our thinking and feeling being that the effort would be worth it and prove a testing ground for the program; i.e., if we could find any success with these cases- we would hope to have even more success with cases of less vintage.

To date all of our Conferences up until yesterday only had listings of "Day Backward" cases- tough cases in many ways. We are pleased to report success beyond anything we could have conceived-

As of the end of September, 2008 some 1,540 cases were scheduled for Conciliation Conference- approximately 63% of the homeowners participated- of the group 490 properties were saved from sale- either from outright settlement of the cases, stays of the sale or postponement of conferences to facilitate proposed settlements- another 330 cases were further postponed for several reasons- for settlement agreements, loan modifications, forbearance agreements or "graceful exits".

We anticipate more precise capturing of data as the program matures....

I want to take a moment to talk about "grateful exit", a phrase I use to describe a case where it is not feasible for the homeowner to remain in the property. These are cases where there is no means by which a loan can be performing, and therefore this process again, on a micro level, fosters discussion on planned departure from the property. The conferences bring certainty to the parties and dignity to the homeowners in planning for the next phase of their living situations.

Lenders have in specific cases agreed to and have even proposed creative plans. In a recent case before me, a disabled homeowner and her son, both in wheel chairs, could not sustain payment on their home. After the assistance of a Judge Pro Tem in a conference setting, the lender agreed to a reasonable time in which the homeowner had to vacate, and also provided a stipend of \$4, 000 in moving costs- certainty, compassion, dignity....

More importantly you WILL HEAR FROM SOME HOMEOWNERS who had such success LIKE-

Eric Rhaney

Deborah Jackson-Smith

Tania Harrigan

Cynthia Henderson

Who will share their stories-

"Build it and they will Come..."

One of the most frequently asked question to me about the Program is "How did you get the lenders to 'Buy In' to the "Program?" The response- they didn't buy into the program-they were the architects OF the program! Like all the stakeholders to the program in our Committee-the lenders have partnered with the Court to develop our Program and this is what I believe is the essence of the Program's successful functioning- an element I suggest is needed for creation of a program similar to ours in other jurisdictions-to have those who locally must operate under such a program be the same individuals who have a voice in developing it.

The Diversion Program utilizes proven case management techniques in new ways. It is challenging-for unlike other dockets-the overwhelming number of defendant/ homeowners proceed "pro se" which is why outreach by community groups such as PUP, ACORN and Associations under the Office of Housing and Community Development are critical to bring homeowners into the program. Their methods of "hand-to-hand" outreach have proven statistically successful- an important piece of the process as it gets the homeowners into the "chute" for counseling and ultimate conferencing.

To "stage" such theatre in the Courtroom, requires an orchestration of a variety of entities coming together which you will hear about: housing counselors, volunteer lawyers, judge pro tems (JPT's). The estimation of in-kind legal services alone for the JPT's amounts to well over \$50, 000. It demonstrates collective effort in the true spirit of the program. I invite you to attend a Conference Day- when we are in session- you will "feel" the energy in the room. I believe Senator Casey had such an experience when he visited in one of our August sessions. "Organized Chaos" with a purpose!

This program has been built on collaboration among all branches of government-our Mayor, Michael Nutter who quickly mobilized and got the word out with a press conference, Public Service Announcements and an infusion of money into more counseling and legal services as well as the "Hero Fund"- bridge funding for homeowners to "cure" mortgage loans in default. As well City Council, our Sheriff's Office and the wonderful court administrators and staff under Judges Jones, Keogh and Sylvester have supported the Program's success.

The cost to "stage" this program has been shouldered by existing court budget although admittedly it presents a strain to existing operations and a challenge to future court budget- we welcome your support in this regard.

In sum, we continue to be a PILOT Program with a capital "P"- we are evolving as a living process as we gain more experience with these cases- our mission, however never waivers-

We are here to provide a micro-focus to citizen borrowers and lenders in the hopes of achieving as many performing mortgage agreements as possible- for the sanctity of these individuals, their families, and our community-

With the continued support and input from our valued stakeholders and the commitment of the wonderful members of the Court and First Judicial District staff we are encouraged that our efforts will be fruitful. We invite other jurisdictions within our Commonwealth borders and on a national level to partner with us in this endeavor and avail ourselves to achieve that goal.

Senator Specter and Senator Casey-we appreciate the "radar" you have placed to our program-your interest and outreach to other jurisdictions has put a real face to the current national-no, international debate. We applaud you for not forgetting that the undercurrent of the mammoth financial challenges now facing us as a nation begins with a Tania Harrigan, a Cynthia Henderson, an Eric Rhaney and the countless others like them.

Senator Specter, Senator Casey-

"Build it and They Will Come!"

Thank you.

Hon. Annette M. Rizzo