

# Erie County Legal Journal

July 29, 2011

Vol. 94 No. 30

USPS 178-360



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94 ERIE 59 - 67

Karash v. Comm. of Pennsylvania, Dept. of Transportation

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# Erie County Legal Journal

*Reporting Decisions of the Courts of Erie County  
The Sixth Judicial District of Pennsylvania*

Managing Editor: Heidi M. Weismiller  
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ERIE COUNTY LEGAL JOURNAL (ISSN 0730-6393) is published every Friday for \$57 per year (\$1.50 single issues/\$5.00 special issues, i.e. Seated Tax Sales). Owned and published by the Erie County Bar Association (Copyright 2011©) 302 West 9th St., Erie, PA 16502 (814/459-3111). Periodical Postage paid at Erie, PA 16515. POSTMASTER: Send Address changes to THE ERIE COUNTY LEGAL JOURNAL, 302 West 9th St., Erie, PA 16502-1427.



# Erie County Bar Association

## Calendar of Events and Seminars

### MONDAY, AUGUST 8, 2011

*Bob Dylan and the Art of Taking Legal Ethics Seriously*  
PBI Video Seminar  
Erie County Bar Association  
9:00 a.m. – 10:00 a.m. (8:30 a.m. reg.)  
\$49 (member) \$59 (nonmember)  
1 hour ethics

### TUESDAY, AUGUST 9, 2011

*Pennsylvania Taxes – Update and Selected Topics*  
PBI Groupcast Seminar  
Erie County Bar Association  
9:00 a.m. – 1:15 p.m. (8:30 a.m. reg.)  
\$254 (member) \$234 (admitted after 1/1/07)  
\$274 (nonmember)  
*Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee:*  
\$229 (member) \$209 (admitted after 1/1/07) \$249 (nonmember)  
4 hours substantive

### WEDNESDAY, AUGUST 10, 2011

*The Nine Principles of Litigation, And Perhaps of Life*  
PBI Groupcast Seminar  
Erie County Bar Association  
8:30 a.m. – 3:30 p.m. (8:00 a.m. reg.)  
*Lunch is Included*  
\$354 (member) \$334 (admitted after 1/1/07)  
\$374 (nonmember)  
*Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee:*  
\$329 (member) \$309 (admitted after 1/1/07) \$349 (nonmember)  
5 hours substantive / 1 hour ethics

### THURSDAY, AUGUST 11, 2011

*Litigating the Failed Real Estate Deal*  
PBI Video Seminar  
Erie County Bar Association  
9:00 a.m. – 12:30 p.m. (8:30 a.m. reg.)  
\$129 (member) \$109 (admitted after 1/1/07)  
\$149 (nonmember)  
2 hours substantive / 1 hour ethics

### TUESDAY, AUGUST 16, 2011

*Legal Issues in Advertising*  
PBI Video Seminar  
Erie County Bar Association  
9:00 a.m. – 1:30 p.m. (8:30 a.m. reg.)  
\$129 (member) \$109 (admitted after 1/1/07)  
\$149 (nonmember)  
3 hours substantive / 1 hour ethics

### TUESDAY, AUGUST 16, 2011

*Lincoln on Professionalism*  
PBI Groupcast Seminar  
Erie County Bar Association  
9:00 a.m. – 12:15 p.m. (8:30 a.m. reg.)  
\$214 (member) \$194 (admitted after 1/1/07)  
\$234 (nonmember)  
*Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee:*  
\$189 (member) \$169 (admitted after 1/1/07) \$209 (nonmember)  
3 hours ethics

### THURSDAY, AUGUST 18, 2011

*Anatomy of a "Superstar" Deposition*  
PBI Groupcast Seminar  
Erie County Bar Association  
8:30 a.m. – 4:15 p.m. (8:00 a.m. reg.)  
*Lunch is Included*  
\$344 (member) \$324 (admitted after 1/1/07)  
\$364 (nonmember)  
*Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee:*  
\$319 (member) \$299 (admitted after 1/1/07) \$339 (nonmember)  
6 hours substantive

### TUESDAY, AUGUST 23, 2011

*Doing Good Deeds... and Title Work (Title, Conveyancing, and Ownership)*  
PBI Video Seminar  
Erie County Bar Association  
9:00 a.m. – 12:30 p.m. (8:30 a.m. reg.)  
\$129 (member) \$109 (admitted after 1/1/07)  
\$149 (nonmember)  
3 hours substantive

### WEDNESDAY, AUGUST 24, 2011

*Family Law Institute - 2011*  
PBI Video Seminar  
Erie County Bar Association  
9:00 a.m. – 5:00 p.m. (8:30 a.m. reg.)  
\$149 (member) \$129 (admitted after 1/1/07)  
\$169 (nonmember)  
5 hours substantive / 1 hour ethics

### 2011 BOARD OF DIRECTORS

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**FREDERICK KARASH**  
**v.**  
**COMMONWEALTH OF PENNSYLVANIA**  
**DEPARTMENT OF TRANSPORTATION**

*CRIMINAL PROCEDURE / DRIVING UNDER THE INFLUENCE*

A police officer has properly asked a licensed driver to submit to a chemical test as required by the second prong of the four-part *Martinovic* test for suspending a licensee's operating privilege for failure to submit to a chemical test when the officer reads the *O'Connell* warning contained in PennDOT form DL-26 to the driver on two occasions, despite the fact that the licensee claims not to understand the warnings.

*CRIMINAL PROCEDURE / DRIVING UNDER THE INFLUENCE*

Stalling behavior on the part of a licensed driver after being asked to submit to a chemical test is sufficient to demonstrate a refusal to submit to the test since a licensee's overall conduct can demonstrate a refusal and anything less than an unqualified, unequivocal assent constitutes a refusal under 75 Pa.C.S. § 1547.

*CRIMINAL PROCEDURE / DRIVING UNDER THE INFLUENCE*

When a licensed driver claims to be confused over the meaning of the *O'Connell* warning contained in PennDOT form DL-26 and repeatedly asks questions about the meaning of the form, whether this conduct constitutes a refusal of a chemical test is a question of fact to be determined based on whether the factfinder finds the driver or the police officer more credible.

*CRIMINAL PROCEDURE / DRIVING UNDER THE INFLUENCE*

Once a motorist has been read the *O'Connell* warning contained in PennDOT form DL-26, his refusal to submit to chemical testing under the terms of the Implied Consent Law will not be excused as unknowing on the basis of the motorist's subjective beliefs regarding his legal rights.

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY,  
PENNSYLVANIA                      NO. 13948-2010

Appearances:     Dennis Williams, Esq., on behalf of Frederick  
   Karash, Appellant<sup>1</sup>  
   Chester J. Karas, Jr., Esq., on behalf of the Department  
   of Transportation, Appellee

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<sup>1</sup> At the time of the hearing before this Lower Court, Appellant was represented by Douglas G. McCormick, Esq.



OPINION

Domitrovich, J., February 7, 2011

This matter is currently before the Commonwealth Court of Pennsylvania on the appeal of Frederick Karash (Appellant/Licensee) from this Trial Court's Order of November 23, 2010, in which after a full hearing, this Trial Court denied Appellant's appeal from the Pennsylvania Department of Transportation's (PennDOT's) suspension of his driving privileges for a period of one (1) year, due to a Chemical Test Refusal, pursuant to 75 Pa.C.S. § 1547(b)(1)(ii).

With regard to the factual and procedural history of this case, on July 10, 2010, Officers Craig Gourley and Michael Sliker of the North East Police Department were attending to a traffic stop. During that traffic stop, Officer Sliker informed Officer Gourley that a green GMC vehicle was en route with one of its headlights out. Officer Gourley followed the green GMC vehicle and performed a traffic stop on the green GMC vehicle. Officer Gourley ran the registration of the vehicle and Dispatch advised him that the vehicle was under Appellant, Frederick Karash's, name. When Officer Gourley approached the vehicle and began speaking to Appellant, he detected the odor of an alcoholic beverage emanating from inside the cabin of the vehicle. Appellant was seated in the driver's seat of the vehicle. While Officer Gourley was speaking with Appellant, Appellant exhibited slurred speech and his breath smelled of alcohol. When Officer Gourley asked Appellant to exit the vehicle, Officer Gourley noticed that Appellant needed to use both of his arms to keep himself up while exiting the vehicle and that Appellant was unsteady on his feet. Officer Gourley advised Appellant that a series of field sobriety tests would be conducted and radioed Officer Sliker for back up assistance.

When Officer Sliker arrived, Officer Sliker conducted the walk and turn test and the one leg stand test. Officer Sliker also offered Appellant the horizontal gaze nystagmus (HGN) test and the portable breath test (PBT). Officer Sliker explained and demonstrated the walk and turn test to Appellant. Officer Sliker credibly stated that Appellant performed poorly on the test in that he continuously raised his arms from his side, lost his balance, raised his arms above his head, was heavy footed and stopped and questioned the procedure while making the turn. With respect to the one leg stand test, Officer Sliker credibly stated Appellant was off balance. Officer Sliker began performing the HGN test on Appellant, but Appellant refused to follow the pen and stated he would not take the test. Officer Sliker also offered Appellant the PBT, and Appellant refused to take it. Appellant then requested a blood test. While interacting with Appellant, Officer Sliker observed that Appellant had watery and bloodshot eyes, spoke with slurred speech, swayed when standing straight, was unstable while walking, and the odor of an



alcoholic beverage was emanating from his breath and person. Based on Officer Sliker's observations and Appellant's performance on the field sobriety tests, Officer Sliker determined Appellant was intoxicated. Officer Sliker placed Appellant under arrest for Driving Under the Influence and informed Appellant that he would be transported for the blood test. Specifically, Officer Sliker handcuffed Appellant and placed him in the rear of Officer Gourley's vehicle.

When they arrived at the police station, Appellant was placed in a holding cell until the paramedic who could perform the blood test arrived. When the paramedic was ready, Officer Sliker advised Appellant that the paramedic was available for the blood draw and took him to the room where the paramedic performs the blood draws. While there, Officer Sliker read Appellant PennDOT's DL-26 Form, titled "Chemical Testing Warnings and Report of Refusal Submit to Chemical Testing as Authorized by Section 1547 of the Vehicle Code in Violation Section 3802." See Commonwealth's Exhibit 1, document 2. The DL-26 Form includes the chemical testing warnings commonly referred to as the O'Connell<sup>2</sup> warning. Appellant expressed that he did not understand the warnings that Officer Sliker read to him. Officer Sliker read the DL-26 Form again. Appellant again stated he did not understand. Appellant was then given two minutes to read the Form to himself. Appellant asked if he could refer to the Vehicle Code. At that point, because Appellant was stalling, Officer Sliker considered Appellant's conduct to constitute a refusal to submit to the blood test.

On August 6, 2010, PennDOT sent a letter to Appellant notifying Appellant of the suspension of his driving privilege for one year, which would take effect September 10, 2010. Commonwealth's Exhibit 1. Appellant appealed the suspension of his driving privilege and a hearing on the matter was held before this Lower Court on November 23, 2010. Following the hearing, this Lower Court determined PennDOT met its burden of proof and denied Appellant's Petition for Appeal. Appellant then filed the instant appeal.

In his Pa. R.A.P. 1925(b) Concise Statement Of Matters Complained Of On Appeal, Appellant raises six issues, which this Lower Court properly combined into the following two issues: (1) Whether this Lower Court erred and/or abused its discretion in finding that PennDOT met its burden with respect to each of the prongs of the four part test PennDOT must satisfy in order to issue a one year license suspension; and (2) Whether this Lower Court erred and/or abused its discretion in finding that Appellant did not meet his burden to prove that his refusal to submit to chemical testing was not knowing and conscious.

<sup>2</sup> See *Commonwealth Dept of Transp., Bureau of Traffic Safety v. O'Connell*, 521 Pa 242, 555 A.2d 873 (1989).



Appellant's first issue raised on appeal concerns whether PennDOT has met its burden of proof. "Pennsylvania's 'Implied Consent Law,' 75 Pa. C.S. §1547(b), provides generally that when a licensee is placed under arrest for driving under the influence (DUI) and is asked to submit to a chemical test, a refusal to submit to the test will result in a 12-month license suspension." *Martinovic v. Dep't of Transp., Bureau of Driver Licensing*, 881 A.2d 30, 31 (Pa. Comwlth. 2005). In order for the Department of Transportation to issue a one-year license suspension, it must satisfy a four-part test, which was explained by the Commonwealth Court of Pennsylvania in *Martinovic*:

To issue a one-year suspension of Licensee's operating privilege under Section 1547(b)(1) of the Vehicle Code, the Department has the burden of proving that (1) Licensee was arrested by a police officer who had 'reasonable grounds to believe' that Licensee was operating or was in actual physical control of the movement of a vehicle while in violation of Section 3802 (i.e. while driving under the influence); (2) Licensee was asked to submit to a chemical test; (3) Licensee refused to do so; and (4) Licensee was specifically warned that a refusal would result in suspension of his operating privileges and would result in enhanced penalties if he was later convicted of violating Section 3802(a)(1).

*Martinovic v. Dep't of Transp., Bureau of Driver Licensing*, 881 A.2d 30, 34 (Pa. Comwlth, 2005).

The first element requires that Appellant be arrested by a police officer who had reasonable grounds to believe that Appellant was operating or was in actual physical control of the movement of a vehicle while in violation of Section 3802. *Id.* "Reasonable grounds exist when a person in the position of the police officer, viewing the facts and circumstances as they appeared at the time, could have concluded that the motorist was operating the vehicle while under the influence of intoxicating liquor." *Banner v. Dep't of Transp., Bureau of Driver Licensing*, 558 Pa. 439, 446, 737 A.2d 1203, 1207 (1999)(citing *Dipaolo v. Dep't of Transp., Bureau of Driver Licensing*, 700 A.2d 569 (Pa. Cmwlth. 1997).

In the instant matter, Officer Gourley of the North East Police Department performed a traffic stop on Appellant's vehicle, which had a malfunctioning headlight. When Officer Gourley approached Appellant's vehicle to speak to Appellant, he smelled the odor of an alcoholic beverage emanating from inside the cabin of the Appellant's vehicle. Appellant was seated in the driver's seat of the vehicle at the time. Officer Gourley noticed slurred speech, the odor of alcohol on Appellant's breath, that Appellant was unsteady on his feet and that Appellant needed to use both arms to steady himself as he exited the vehicle. Appellant also



participated in a series of field sobriety tests conducted by Officer Sliker, whom Officer Gourley had radioed for back up.

Officer Sliker explained that Appellant participated in the walk and turn test and the one-leg stand test. Appellant performed poorly on both tests. Officer Sliker then began to conduct the horizontal gaze nystagmus test (HGN), but Appellant would not follow the pen. At that point, based on Appellant's performance on the tests and Officer Sliker's observations, including that Appellant had watery, bloodshot eyes, spoke with slurred speech, swayed when standing straight, was unstable when walking, and smelled of alcohol, Officer Sliker determined Appellant was intoxicated. Furthermore, Appellant was behind the wheel of the vehicle. Considering all of the observations made by both Officers and Appellant's performance on the field sobriety tests, "a person in the position of the police officer, viewing the facts and circumstances as they appeared at the time, could have concluded that the motorist was operating the vehicle while under the influence of intoxicating liquor." *See Banner* at 446. Therefore, the Officers had reasonable grounds to believe that Appellant was operating or was in actual physical control of the movement of a vehicle while in violation of Section 3802. *See Martinovic* at 34.

Following the field sobriety tests and after Officer Sliker made his determination that Appellant was intoxicated, Officer Sliker took Appellant into custody and placed him under arrest. Specifically, Officer Sliker handcuffed Appellant and placed him in Officer Gourley's vehicle to be transported to the police station. "To constitute an arrest under section 1547(b), the licensee must be under the custody and control of the arresting officer." *Welcome v. Dep't of Transp., Bureau of Driver Licensing*, 167 Pa.Cmwlth. 245, 250 647 A.2d 971, 974 (1994). Considering that Appellant was placed in handcuffs and put into the back of a police vehicle, he was under the custody and control of the arresting officer. Therefore, an arrest took place for purposes of 75 Pa. C.S. § 1547(b). Furthermore, at the time of the hearing, Appellant admitted he was placed under arrest. *See* (N.T. License Suspension Hearing, 11/23/2010, p. 45).

Appellant was arrested by a police officer who had reasonable grounds to believe that Appellant was operating or was in actual physical control of the movement of a vehicle while in violation of Section 3802. *See Martinovic* at 34. Therefore, PennDOT satisfied its burden with respect to the first prong of the test.

The second prong of the test requires that the licensee was asked to submit to a chemical test. Prior to his arrest, Officer Sliker offered Appellant the opportunity to take a Portable Breath Test (PBT). Appellant refused to take the PBT, but requested a blood test. Officer Sliker explained to Appellant at that time that he would be placed under



arrest and transported for a blood test. After arriving at the police station, Officer Sliker let Appellant know that the paramedic was available to draw blood and asked Appellant if he would give blood. Appellant did not indicate that he would submit to a blood draw. Then, Officer Sliker read him the DL-26 Form. At numbered paragraph 2, The DL-26 Form specifically states, "I am requesting that you submit to a chemical test of blood." *See* Commonwealth's Exhibit 1, document 2. After reading the form to Appellant, Officer Sliker again asked Appellant if he was going to give blood. Officer Sliker also read Appellant the DL-26 Form a second time, which, as mentioned above, includes the language, "I am requesting that you submit to a chemical test of blood." *See* Commonwealth's Exhibit 1, document 2. Therefore, Officer Sliker asked Appellant to submit to a chemical test. Hence, PennDOT has also satisfied its burden with respect to the second prong of the test.

The third prong of the test requires that the Licensee refused to submit to the chemical test. According to the Supreme Court of Pennsylvania, "anything less than an unqualified, unequivocal assent constitutes a refusal under § 1547." *Com., Dept. of Transp. v. Renwick*, 543 Pa. 122, 131, 669 A.2d 934, 939 (1996). Here, Officer Sliker specifically asked Appellant if he would submit to a blood test. Appellant consistently responded that he did not understand the warnings that were read to him. Officer Sliker read the DL-26 Form to Appellant and Appellant stated he did not understand the warnings described in the Form. Officer Sliker read the DL-26 Form again. Appellant again stated he did not understand the Form. The Officers then gave Appellant the DL-26 Form to read over for himself for two minutes. Appellant then asked if he could refer to the Vehicle Code. Officer Sliker took the Form away from Appellant at this point and considered Appellant's conduct as an indication of his refusal to submit to the blood test. *See McCloskey v. Dep't of Transp., Bureau of Driver Licensing*, 722 A.2d 1159, 1163 (Pa. Cmwlth. 1999)(stating "[a] licensee's overall conduct can demonstrate a refusal.") This Lower Court found Officer Sliker's belief that Appellant was merely stalling when he inquired about the Vehicle Code was credible.

In *McCloskey v. Dep't of Transp., Bureau of Driver Licensing*, 722 A.2d 1159 (Pa. Cmwlth. 1999), the police officer requested that the licensee submit to a blood test after reciting the implied consent law. *McCloskey* at 1161. The police officer repeated the chemical testing warnings again and the licensee asked that the police officer repeat the warnings again. *Id.* At that point, the police officer gave the licensee the DL-26 form for him to review on his own. *Id.* The police officer read the warnings again and asked licensee whether he would submit to the blood test. *Id.* The licensee in that case did not affirmatively consent to take the blood test. *Id.* After about eight minutes from the first reading of the DL-26 form, the police officer recorded that the licensee refused to



submit to a blood test. *Id.* The trial court in that case determined that the licensee was not really confused by the warnings, but that he was "more likely than not stalling for time." *Id.* The trial court in that case denied the licensee's appeal and the Commonwealth Court affirmed the trial court's ruling. Similarly, in the instant matter, this Lower Court found Officer Sliker's statement that Appellant was stalling was credible and denied the licensee's appeal.

At the time of the Lower Court hearing, Appellant's Counsel brought up the case of *McDonald v. Dep't of Transp., Bureau of Driver Licensing*, 708 A.2d 154 (Pa. Cmwlth 1998), in which the Commonwealth Court of Pennsylvania "recognized that it is not a refusal for purposes of section 1547 of the Vehicle Code, when a licensee reasonably delays a decision because of confusion as to his or her right and then assents to submit to a chemical test when those rights are made clear." *McCloskey* at 1162. In *McDonald*, the licensee was confused regarding the warnings contained in the DL-26 form and asked the officer several questions. *McDonald* at 155. According to the officer, the exchange lasted approximately ten to fifteen minutes. *Id.* at 155. The officer in that case testified that he took the form away from the licensee because she was toying with him. *Id.* at 155. The licensee denied that she was toying with the officer and explained that she only wanted to comprehend the contents of the form before signing it. *Id.* at 155. In that case, the trial court found the testimony of the licensee was credible over that of the officer. *Id.* at 155. The Commonwealth Court agreed that ten to fifteen minutes of questioning when confused about the licensee's rights did not constitute a refusal in that case. *Id.* at 156-57. However, the Commonwealth Court "recognized that the officer's testimony presented a different picture of the licensee's behavior and seriousness than that presented by the licensee, and if accepted as credible could have supported a legal determination that the licensee refused to submit to the blood test." *McCloskey* at 1163.

The instant case resembles *McCloskey* more closely than *McDonald* in that this Lower Court found the testimony of Officer Sliker was credible. Specifically, this Lower Court found Officer Sliker's opinion that Appellant was merely stalling when he inquired about the Vehicle Code was credible. This Lower Court found that Appellant refused to submit to the blood test. Therefore, PennDOT has also satisfied its burden with respect to the third prong.

The fourth prong of the test requires that the licensee "was specifically warned that a refusal would result in suspension of his operating privileges and would result in enhanced penalties if he was later convicted of violating Section 3802(a)(1)." Officer Sliker read the DL-26 Form to Appellant twice and permitted Appellant to read over the document himself. Numbered paragraph 3 of the DL-26 Form specifically states, "If you refuse to submit to the chemical test,



your operating privilege will be suspended for at least 12 months." Commonwealth's Exhibit 1, document 2. Numbered paragraph 3 then explains enhanced penalties. *Id.* Officer Sliker specifically warned Appellant that his refusal to submit to chemical testing would result in suspension of Appellant's operating privileges and would result in enhanced penalties if Appellant was convicted under Section 3802(a)(1). This Lower Court determined that PennDOT established that Appellant was specifically warned that a refusal would result in suspension of his operating privileges and would result in enhanced penalties if he was later convicted of violating Section 3802(a)(1). Therefore, PennDOT also satisfied its burden with respect to the fourth prong of the test. *See also Yourick v. Dep't of Transp., Bureau of Driver Licensing*, 965 A.2d 341, 345 (Pa. Cmwlth. 2009)(stating, "[w]e hold therefore that the DL-26 Form is sufficient as a matter of law to meet the warning requirement under Vehicle Code Section 1547(b)...").

The second issue Appellant raises on appeal concerns whether Appellant satisfied his burden of proof. PennDOT has met its burden with respect to the four-part test. "Once that burden is met, the licensee has the burden to prove that (1) he was physically incapable of completing the [chemical] test or (2) his refusal was not knowing and conscious." *Martinovic v. Dep't of Transp., Bureau of Driver Licensing*, 881 A.2d 30, 34 (Pa. Comwlth. 2005)(citing *Dep't of Transp., Bureau of Driver Licensing v. Boucher*, 547 Pa. 440, 691 A.2d 450 (1997)). In the instant matter, Appellant claims this Lower Court erred by determining that Appellant did not prove that his refusal was not knowing and conscious. According to the Supreme Court of Pennsylvania, "a motorist is incapable of making a knowing and conscious refusal when he is unaware that his right to remain silent and his right to consult with an attorney are not applicable to the provisions of the Implied Consent Law." *Commonwealth Dep't of Transp., Bureau of Driver Licensing v. Scott*, 546 Pa 241, 249, 684 A.2d 539, 543 (1996)(citing *O'Connell*, 521 Pa. at 252, 555 A.2d at 877).

In the instant matter, Officer Sliker read the DL-26 Form, which includes the requisite warnings informing Appellant that he does not have the right to remain silent, nor the right to an attorney, to Appellant not once, but twice. Additionally, Officers Sliker and Gourley gave Appellant an opportunity to read the Form to himself. In *Scott*, the licensee, after being given the necessary warnings, refused to submit to a blood test and continued to request to talk to his attorney. In that case, the Pennsylvania Supreme Court concluded,

once a motorist has been properly advised of his O'Connell warnings, a refusal to submit to chemical testing under the terms of the Implied Consent Law will not be excused as unknowing on the basis of the motorist's subjective beliefs regarding the



interplay between the Implied Consent Law and his Miranda rights.

*Scott* at 255. In the instant matter, Appellant claims he was confused by the fact that he was being told that he would not receive the same protections that would come into effect in a criminal case. At the time of the Lower Court hearing Appellant maintained, "everybody always has rights . . . ." (N.T. License Suspension Hearing, 11/23/2010, p. 45). This Lower Court found that Appellant was not genuinely confused, but rather, was stalling. Even if Appellant subjectively did believe he had the rights afforded a criminal Defendant, pursuant to *Scott*, such confusion does not excuse a refusal to submit to chemical testing as unknowing. *Scott* at 255. Appellant provided no additional evidence to support a theory that his refusal was not knowing and conscious. Therefore, Appellant did not meet his burden, and this Lower Court did not err in finding the same.

For all of the foregoing reasons, Appellant's claims are without merit.

**BY THE COURT:**

/s/ **Stephanie Domitrovich, Judge**



**CHANGE OF NAME NOTICE**  
IN THE COURT OF COMMON  
PLEAS OF THE 6TH JUDICIAL  
DISTRICT OF PENNSYLVANIA  
No. 12265 of 2011

In the matter of the name change of  
Troy Jakob Matthew Daniels  
Notice is hereby given that Rachel  
Elizabeth Daniels, on behalf of  
Troy Jakob Matthew Daniels,  
filed a Petition in the above named  
Court requesting an order to change  
the name of Troy Jakob Matthew  
Daniels to Jakob Zander Goodwill.  
The Court has fixed the 23rd day  
of August, 2011, at 11:30 a.m. in  
Courtroom I-217 of the Erie County  
Courthouse, 140 W. 6th St., Erie,  
PA 16501 as the time and place for  
the hearing on said petition, when  
and where all interested parties  
may appear and show cause, if any  
they have, why the prayer of the  
Petitioner should not be granted.

Jul. 29

**INCORPORATION NOTICE**  
NOTICE is hereby given that DCD  
Excavating Company has been  
incorporated under the provisions  
of the Business Corporation Law of  
1988, as amended.

Grant M. Yochim, Esq.  
Steadman Law Office  
24 Main Street East  
P.O. Box 87  
Girard, PA 16417

Jul. 29

**LEGAL NOTICE**  
IN THE COURT OF COMMON  
PLEAS OF ERIE COUNTY,  
PENNSYLVANIA

DIANA L. GROTERS and  
NORMAN P. HENDERSON,  
Plaintiffs

v.

CARL CLARETT, Defendant  
NO.: 10373-2009

NOTICE OF LAWSUIT  
TO CARL CLARETT:

Notice is hereby provided that you  
have been sued and you are the  
defendant in a lawsuit filed against  
you by Diana Groters and Norman  
Henderson as a result of injuries  
they sustained in an automobile  
accident on or about January 30,  
2007 on West 18th Street in the City

of Erie, Pennsylvania.

The above action is presently  
pending in the Erie County Court  
of Common Pleas. Counsel has  
appeared upon and is defending your  
interests in the above proceedings.  
You should contact your counsel as  
follows:

Matthew W. Fuchs, Esquire  
MacDonald Illig Jones  
& Britton, LLP  
100 State Street, Suite 700  
Erie, PA 16507  
814/870-7612

You are warned that if you fail  
to defend the action filed against  
you the case may proceed without  
you and judgment may be entered  
against you by the court without  
further notice for any money  
claimed in the complaint or for  
other claims or relief requested by  
the plaintiffs. You may lose money  
or property or other rights important  
to you.

James J. Stuczynski, Esq.  
Attorneys for Plaintiffs  
234 West Sixth Street  
Erie, PA 16507-1319  
814/452-6232

Jul. 29





# Making Your Case with a Better Memory

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**Tuesday, August 2, 2011**

Bayfront Convention Center

8:30 a.m. - 12:45 p.m. (Registration - 8:00 a.m.)

\$129 (ECBA members/non-attorney staff)

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LIVE SEMINAR

Reservations due to the ECBA by July 29.

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## Presenter

Paul Mellor is President of Success Links, a memory training company dedicated to helping improve the lives of people by improving their memory power. A finalist in the 2008 USA Memory Championship in New York City, Mellor remembered the names of over 90 people in less than 15 minutes, recalled in correct order over 100 single-digit numbers after a five minute study, and recalled the exact order of a shuffled deck of playing cards after less than a three-and-a-half minute review.

His popular seminars have been presented to attorneys throughout the United States, including to State Bar Associations in Arkansas, California, Colorado, Delaware, Hawaii, Illinois, Maine, Maryland, Missouri, Nebraska, Nevada, New Mexico, Ohio, Oregon, Oklahoma, Washington and Wisconsin. Presentations at the County level - in PA alone - have been made in Fayette, Pittsburgh, Philadelphia.... and now Erie. He has written extensively on memory improvement and has been quoted in *Newsweek*, *The Wall Street Journal*, and *USA Today*. He resides in Richmond, Virginia.







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**SHERIFF SALES**

Notice is hereby given that by virtue of sundry Writs of Execution, issued out of the Courts of Common Pleas of Erie County, Pennsylvania, and to me directed, the following described property will be sold at the Erie County Courthouse, Erie, Pennsylvania on

**August 19, 2011  
at 10:00 AM**

All parties in interest and claimants are further notified that a schedule of distribution will be on file in the Sheriff's Office no later than 30 days after the date of sale of any property sold hereunder, and distribution of the proceeds made 10 days after said filing, unless exceptions are filed with the Sheriff's Office prior thereto.

All bidders are notified prior to bidding that they **MUST** possess a cashier's or certified check in the amount of their highest bid or have a letter from their lending institution guaranteeing that funds in the amount of the bid are immediately available. If the money is not paid immediately after the property is struck off, it will be put up again and sold, and the purchaser held responsible for any loss, and in no case will a deed be delivered until money is paid.

Bob Merski

Sheriff of Erie County

Jul. 29 and Aug. 5, 12

**SALE NO. 1**

**Ex. #11988 of 2010  
PMC INVESTMENT  
CORPORATION, Plaintiff  
v.**

**EDINBORO HOSPITALITY  
GROUP, INC., Defendant  
SHORT DESCRIPTION**

ALL that certain piece or parcel of land situate in the Borough of Edinboro, Erie County, Pennsylvania, having erected thereon a commercial building operated as a hotel and conference center and being commonly known as 300 Plum Street (alternatively, 401 Plum Street), Edinboro, Pennsylvania, and bearing Erie County Tax Parcel No. (11) 12-39-4.03.

Susan Fuhrer Reiter  
Pa Supreme Court ID No. 43581  
MacDonald, Illig, Jones &  
Britton, LLP  
100 State Street, Suite 700  
Erie, Pennsylvania 16507-1459  
(814) 870-7760  
Attorneys for Plaintiff

Jul. 29 and Aug. 5, 12

**SALE NO. 2**

**Ex. #11263 of 2011  
ERIE GENERAL ELECTRIC  
FEDERAL CREDIT UNION,  
Plaintiff  
v.**

**ROBERT S. SANKO, Defendant  
ADVERTISING DESCRIPTION**

By virtue of Writ of Execution filed at No. 11263-2011, Erie General Electric Federal Credit Union v. Robert S. Sanko, owner of the following properties identified below:

1) Situate in the Township of McKean, County of Erie, and Commonwealth of Pennsylvania at 10475 West Old Route 99, McKean, PA 16426:

Assessment Map No.:  
31021073101000

Assessed Value Figure: \$86,570.00  
Improvement Thereon: Single Family Residential Dwelling with Four side closed MTL pole building  
Michael S. Jan Janin, Esquire  
Pa. I.D. No. 38880  
The Quinn Law Firm  
2222 West Grandview Boulevard  
Erie, PA 16506  
(814) 833-2222

Jul. 29 and Aug. 5, 12

**SALE NO. 3**

**Ex. #11163 of 2011  
NORTHWEST SAVINGS  
BANK, Plaintiff,  
v.**

**MICHAEL J. BAUMANN  
and DESTINE A. BAUMANN,  
Defendants  
SHERIFF'S SALE**

By virtue of a Writ of Execution filed at No. 2011-11163, Northwest Savings Bank vs. Michael J. Baumann and Destine A. Baumann, owners of property situate in the City of Erie, Erie County, Pennsylvania being: 616 East 14th

Street, Erie, Pennsylvania.  
40' x 105' x 40' x 105'  
Assessment Map Number:  
(15) 2033-224  
Assessed Value Figure: \$36,010.00  
Improvement Thereon: Residence  
Kurt L. Sundberg, Esq.  
Marsh Spaeder Baur Spaeder  
& Schaaf, LLP  
Suite 300, 300 State Street  
Erie, Pennsylvania 16507  
(814) 456-5301

Jul. 29 and Aug. 5, 12

**SALE NO. 4**

**Ex. #11131 of 2011  
PNC BANK, NATIONAL  
ASSOCIATION, Plaintiff  
v.**

**BRIAN P. HOWER, Defendant  
SHERIFF'S SALE**

By virtue of a Writ of Execution filed to No. 2011-11131 PNC BANK. NATIONAL ASSOCIATION vs. BRIAN P. HOWER, owner(s) of property situated in TOWNSHIP OF MILLCREEK Erie County, Pennsylvania being 4258 Alison Avenue, Erie, Pa 16505  
0.2121 Acres

Assessment Map number:  
33-92-376-70.07

Assessed Value figure: \$128,670.00  
Improvement thereon: Residential Dwelling  
Michael C. Mazack, Esq.  
1500 One PPG Place  
Pittsburgh, PA 15222  
(412) 594-5506

Jul. 29 and Aug. 5, 12

**SALE NO. 5**

**Ex. #11233 of 2010  
PNC BANK, NATIONAL  
ASSOCIATION, Plaintiff  
v.  
DAVID J. WAITE, Defendant  
SHERIFF'S SALE**

By virtue of a Writ of Execution filed to No. 2010-11233 PNC BANK, NATIONAL ASSOCIATION vs. DAVID J. WAITE, owner(s) of property situated in CITY OF CORRY, Erie County, Pennsylvania being 302 East Street, Corry, PA 16407

0.1421 Acres  
Assessment Map number: 5-28-182-1  
Assessed Value figure: \$49,210.00



Improvement thereon: Residential Dwelling  
Michael C. Mazack, Esq.  
1500 One PPG Place  
Pittsburgh, PA 15222  
(412) 594-5506

Jul. 29 and Aug. 5, 12

**SALE NO. 7**

**Ex. #14230 of 2010**

**US BANK NATIONAL  
ASSOCIATION AS TRUSTEE  
FOR MASTR ASSET  
SECURITIES TRUST, 2006-  
HE2, Plaintiff**

**v.**

**SHANA K. DEBOE,  
Defendant(s)**

**SHERIFF'S SALE**

By virtue of a Writ of Execution filed to No. 14230-10 US BANK NATIONAL ASSOCIATION AS TRUSTEE FOR MASTR ASSET SECURITIES TRUST, 2006-HE2 vs. SHANA K. DEBOE  
Amount Due: \$97,194.89  
SHANA K. DEBOE, owner(s) of property situated in the CITY OF ERIE, Erie County, Pennsylvania being 4311 HARDING DRIVE, ERIE, PA 16509-1446  
Dimensions: 40 X IRR  
Acreage: 0.1240  
Assessment Map number: 19-061-024.0-213.00  
Assessed Value: \$73,150.00  
Improvement thereon: residential Phelan Hallinan & Schmieg, LLP  
One Penn Center at Suburban Station, Suite 1400  
1617 John F. Kennedy Boulevard  
Philadelphia, PA 19103-1814  
(215) 563-7000

Jul. 29 and Aug. 5, 12

**SALE NO. 8**

**Ex. #14514 of 2010**

**CITIMORTGAGE, INC. S/B/M  
CITIFINANCIAL MORTGAGE  
COMPANY, INC., Plaintiff**

**v.**

**VIRGINIA SUE SHAFFER  
A/K/A VIRGINIA S. SHAFFER  
ROBERT LEE SHAFFER A/K/A**

**ROBERT L. SHAFFER,  
Defendant(s)**

**LEGAL DESCRIPTION**

All that certain piece or parcel of land situate in the Borough of

North East, County of Erie and Commonwealth of Pennsylvania, bounded and described as follows, to-wit:

BEGINNING at a point on the east line of Blaine Street, said point being South 1 degree - 55 minutes East, 251.4 feet from the intersection of the south line of Main Street with the east line of Blaine Street, said point also being the southwest corner of premises conveyed by Joanna L. Orton, now by marriage, Joanna O. Meehl, and James R. Meehl, her husband, to North East Projects, Inc. by deed dated August 1, 1969, and recorded August 1, 1969 in Erie County Deed Book 1007 at Page 360; thence North 84 degrees- 33 minutes - 01 second East, 148.06 feet along the south line of premises formerly conveyed to North East Projects, Inc. to a point; thence South 00 degree - 59 minutes - 44 seconds East, 69.96 feet to a point; thence South 88 degrees - 58 minutes - 18 seconds West, along the south line of premises conveyed to James R. Meehl et ux, by deed recorded in Erie County Deed Book 670 at Page 417, 146.67 feet to a point on the east line of Blaine Street, said point being the southwest corner of premises conveyed to James R. Meehl, et ux, by deed recorded in Erie County Deed Book 670 at Page 417; thence North 1 degree - 55 minutes - 00 second West, 58.60 feet along the east line of Blaine Street to a point and the place of beginning.

Said premises more commonly known as 14 Blaine Street, North East, Pennsylvania 16428 and bearing Erie County Index No. (36) 5-34-25. This description is derived from a survey prepared by Francis M. Melnichak, registered surveyor, dated February 24, 2003, and recorded September 12, 2003, in Erie County Map No. 2003, page 208, and being identified as 'PARCEL 1.'

THIS DEED is taken under and subject to all restrictions, easements, rights of way, building lines, leases, oil and gas leases or record, and to all easements and rights of way

visible and discoverable upon an inspection of the premises.

TITLE TO SAID PREMISES IS VESTED IN Robert Lee Shaffer and Virginia Sue Shaffer, h/w, by Deed from North East Christian and Missionary Alliance Church, a Pennsylvania non-profit corporation, dated 10/07/2003, recorded 10/09/2003 in Book 1074, Page 1001.

Tax Parcel #: 36-005-034.0-025.00  
Premises being: 14 BLAINE STREET, NORTH EAST, PA 16428-1502  
Phelan Hallinan & Schmieg, LLP  
1617 JFK Boulevard, Suite 1400  
One Penn Center Plaza  
Philadelphia, PA 19103  
215-563-7000

Jul. 29 and Aug. 5, 12

**SALE NO. 9**

**Ex. #10472 of 2011**

**MIDFIRST BANK, Plaintiff**

**v.**

**TOM A. LUEDKE, EXECUTOR  
OF THE ESTATE OF  
DONALD A. LUEDKE, II,  
DECEASED, Defendants**

**SHERIFF'S SALE**

By virtue of a Writ of Execution No. 10472-11 MIDFIRST BANK, Plaintiff vs. TOM A. LUEDKE, EXECUTOR OF THE ESTATE OF DONALD A. LUEDKE, II, DECEASED, Defendants  
Real Estate: 12220 LAKEVIEW DRIVE, EDINBORO, PA  
Municipality: Township of Washington, Erie County, Pennsylvania  
Lakeside Cliffs Subdivision, Lot 17, Map Book 4, Pages 414 & 415  
See Deed Book 200, Page 989  
Tax I.D. (45) 16-28-2  
Assessment: \$19,500. (Land)  
\$36,980. (Bldg)

Improvement thereon: a residential dwelling house as identified above  
Leon P. Haller, Esquire  
Purcell, Krug & Haller  
1719 North Front Street  
Harrisburg, PA 17104  
(717) 234-4178

Jul. 29 and Aug. 5, 12



**SALE NO. 10**

**Ex. #11120 of 2011**

**U.S. BANK NATIONAL  
ASSOCIATION TRUSTEE  
FOR THE PENNSYLVANIA  
HOUSING FINANCE AGENCY,  
Plaintiff**

**v.**

**STEPHANIE L. MORENO  
A/K/A STEPHANIE LYNN  
MORENO A/K/A STEPHANIE L.  
CHRISTIE, Defendants**

**SHERIFF'S SALE**

By virtue of a Writ of Execution No. 11120-11 U.S. BANK NATIONAL ASSOCIATION TRUSTEE FOR THE PENNSYLVANIA HOUSING FINANCE AGENCY, Plaintiff vs. STEPHANIE L. MORENO A/K/A STEPHANIE LYNN MORENO A/K/A STEPHANIE L. CHRISTIE, Defendants

Real Estate: 511 LIGHTHOUSE STREET, ERIE, PA

Municipality: City of Erie, Erie County, Pennsylvania

Dimensions: 114 x 36

See Deed Book 1414, Page 0404

Tax I.D. (14) 1044-242

Assessment: \$ 6,900. (Land)

\$23,210. (Bldg)

Improvement thereon: a residential dwelling house as identified above

Leon P. Haller, Esquire

Purcell, Krug & Haller

1719 North Front Street

Harrisburg, PA 17104

(717) 234-4178

Jul. 29 and Aug. 5, 12

**SALE NO. 11**

**Ex. #12270 of 2010**

**PNC MORTGAGE, A DIVISION  
OF PNC BANK, N.A. S/B/M/T  
NATIONAL CITY MORTGAGE  
COMPANY, Plaintiff,**

**v.**

**KAREN MOHR, Defendant**

**SHERIFF'S SALE**

By virtue of a Writ of Execution filed to No. 12270-10, PNC Mortgage, et al, vs. Karen Mohr, owner(s) of property situated in the City of Erie, Erie County, Pennsylvania being 1029 East 29th Street, Erie, PA 126504. [sic]

Dimensions: 0.1550 acres

Assessment Map Number:  
18-5050-108.

Assess Value figure: \$48,480.00

Improvement thereon: Dwelling

Louis P. Vitti, Esquire

Attorney for Plaintiff

215 Fourth Avenue

Pittsburgh, PA 15222

(412) 281-1725

Jul. 29 and Aug. 5, 12

**SALE NO. 12**

**Ex. #15555 of 2010**

**HSBC Bank USA, N.A., as  
Indenture Trustee for the  
registered Noteholders of  
Renaissance Home Equity Loan  
Trust 2007-2, Plaintiff**

**v.**

**Lori A. Porter**

**Ralph J. Porter, Defendant(s)**

**SHERIFF'S SALE**

ALL OUR RIGHT, TITLE, AND INTEREST in that certain piece or parcel of land situate on the east side of Ellis Road, (Twp. Rt. 473) in the Township of Springfield, Erie County, Pennsylvania, bearing Erie County Assessment No. (39) 2-14-7.01, bounded and described as follows, to-wit:

BEGINNING at an iron spike located in the centerline of Ellis Road at the Northwest corner of lands herein described, said point also being the Southwest corner of lands of Loren J. and Sandra J. Davis known as Erie County Index No. (39) 3-13-19, and said point being distant South 00 degrees 10' 50" West, 874.32 feet from an iron spike located at the intersection of the centerlines of Ellis Road and Old Lake Road (Twp. Rt. 417); Thence from said point of beginning, the following courses:

1) S 89 degrees 57' 12" E, along said lands of Davis, passing over an iron pipe at a distance of 24.85 feet, a total distance of 349.42 feet to an iron survey pin located on the west line of lands of Old Luke Road Summer City Trust known as Erie County Index No. (39) 3-13-1. said point being the Northeast corner of lands herein described; Thence,

2) S 00 degrees 13' 18" E, along the West line of said Summer City Trust, a distance of 74.92 feet to an iron survey pin, said point being a Northeast corner of lands of James S.

& Kristin A. Smith known as Erie County Index No. (39) 3-13-18; Thence,

3) N 89 degrees 56' S311 [sic] W, along said lands of Smith, a distance of 349.93 feet to an iron spike located in the centerline of Ellis Road at the Southwest corner of lands herein described, said point also being the Northwest corner of said lands of Smith; Thence,

4) N 00 degrees 10' 50" E, along the centerline of Ellis Road, a distance of 74.89 feet to the point of beginning.

SAID parcel containing 0.558 net ac. (excluding road r/w), and said parcel being shown on the map titled "Subdivision for Beckie R. Burgos and Jeffrey W. DiPolito", dated October 10, 1997, and recorded as Erie County Drawing Number 1997-357.

ALSO

ALL THAT PARCEL of land situate on the West side of Ellis Road (Twp. Rt. 473), Township of Springdale, County of Erie and Commonwealth of Pennsylvania, bounded and described as follows:

BEGINNING at an iron survey pin located in the centerline of Ellis Road, at the Northeast corner of lands herein described, said point also being the Southeast corner of lands of Robert L. and Judy R. Bort as described in Record Book 84, page 1683, and said point being distant S 00 degrees 10' 50" W, 1261.52 feet from an iron spike located at the intersection of the centerline of Ellis Road and Old Lake Road (Twp. Rt. 417), Thence from said point of beginning the following courses:

1) S 00 degrees 14' 20" W, along the centerline of Ellis Road, a distance of 488.00 feet to an iron spike, said point being the Southeast corner of lands herein described and also the Northeast corner of the residue of lands of G.A. & C. Lesley Ryan as described in Record Book 455, Page 510; Thence,

2) N 89 degrees 50' 05" W, along said residue of lands of Ryan, passing over iron survey pins at distances of 25.00 feet and 683.00 feet, a total distance of



1272.48 feet to an iron survey pin located on the East line of lands of Robert L. & Judy R. Bort as described in Record Book 84, Page 1683, said point being the Northwest corner of said residue of lands of Ryan and also the Southwest corner of lands herein described; Thence, 3) N 00 degrees 42' 30" E, along said lands of Bort, a distance of 366.00 feet to an old stone monument, said point being the Southwest corner of lands of Gary L. Coxon as described in Record Book 80, Page 762; Thence,

4) S 88 degrees S8' [sic] 40" E, along said lands of Coxon, a distance of 291.92 feet to an iron survey pin, said point being the Southeast corner of said lands of Coxon; Thence,

5) N 00 degrees 09' 49" E, continuing along said lands of Coxon, a distance of 126.19 feet to an iron survey pin, said point being the southwest corner of the aforementioned lands of Bort; Thence,

6) S 89 degrees 50' 45" E, along said lands of Bort, passing over iron survey pins at distances of 514.93 feet 952.76 feet, a total distance of 977.76 feet to the point of beginning.

BEING KNOWN AS: 808 Ellis Road, East Springfield, PA 16411  
PROPERTY ID NO.: 39-002-014-0-007.01

TITLE TO SAID PREMISES IS VESTED IN Lori A. Porter and Ralph J. Porter by Deed from Jeffrey W. DiPolito, single and Beckie R. Burgos, single dated 04/27/2007 recorded 05/29/2007 in Deed Book 1418, Page 2141.  
Udren Law Offices, P.C.

Chandra M. Arkema, Esquire  
PA ID 203437

Attorney for Plaintiff  
Woodcrest Corporate Center  
111 Woodcrest Road, Suite 200  
Cherry Hill, NJ 08003-3620  
856-669-5400

Jul. 29 and Aug. 5, 12

#### SALE NO. 13

Ex. #14226 of 2010

PNC Bank, National Association,  
Plaintiff,

v.

**Dennis M. Casey &  
Janet L. Casey, Defendant  
SHERIFF'S SALE**

By virtue of a Writ of Execution filed to No. 14226-2010 PNC Bank, National Association vs. Dennis M. Casey & Janet L. Casey, owner(s) of property situated in City of Erie, Erie County, Pennsylvania being 814 West 23rd Street, Erie, PA 16502

130' x 135'

Assessment Map number:  
(19) 6022-216

Assessed Value figure: \$47,560.00

Improvement thereon: A dwelling  
Patrick Thomas Woodman, Esq.  
436 Seventh Ave., 1400 Koppers Bldg.  
Pittsburgh, PA 15219

(412) 434-7955

Jul. 29 and Aug. 5, 12

#### SALE NO. 14

Ex. #10574 of 2011

**JPMC Specialty Mortgage  
LLC f/k/a WM Specialty  
Mortgage LLC**

v.

**Barry A. Brumett; Melissa A.  
Brumett**

**SHERIFF'S SALE**

By virtue of a Writ of Execution file to No. 10574-2011 JPMC Specialty Mortgage LLC f/k/a WM Specialty Mortgage LLC vs. Barry A. Brumett; Melissa A. Brumett, owner(s) of property situated in the Borough of Wattsburg, County of Erie, Pennsylvania being 14405-14407 Church Street, Wattsburg, PA 16442

82.5 X 264, 21,780 Square feet

.025 acre

Assessment Map Number: 48-1-5-3

Assessed Value figure: \$67,440.00

Improvement thereon: Two Family  
Dwelling

Zucker, Goldberg & Ackerman, LLC  
200 Sheffield Street, Suite 101  
Mountainside, NJ 07092

(908) 233-8500

Jul. 29 and Aug. 5, 12

#### SALE NO. 15

Ex. #11367 of 2011

**Household Finance Consumer  
Discount Company**

v.

**William A. McCommons and  
Lisa M. McCommons  
LEGAL DESCRIPTION**

ALL that certain piece or parcel of land situate in the Township of McKean, County of Erie and Commonwealth of Pennsylvania, bounded and described as follows, to-wit:

BEGINNING at a point of intersection of the West line of Lowe Road (formerly known as Baron Road) with the south line of Pond View Drive; thence South 13° 18' 07" East along the west line of Lowe Road (formerly known as Baron Road) 360.96 feet to a point; thence South 76° 41' 53" West, 400.00 feet to a point; thence North 13° 18' 07" East, 332.99 feet to a point in the south line of Pond View Drive; thence North 72° 41' 53" East along the south line of Pond View Drive, 400.98 feet to the west line of Lowe Road (formerly known as Baron Road), the place of beginning, containing 3.186 acres of land, be the same more or less. Having erected thereon a two story frame dwelling, detached garage and barn, and being more commonly known as 8372 Lowe Road, McKean, Pennsylvania 16426.

Being further identified by Erie County Assessment Index No. (31) 10-24-70

Being the same premises indicated as the "residue" in Erie County Map Book 16 at page 150.

Subject to all easements, restrictions and rights of way of record and/or those that are visible to a physical inspection.

Subject to all rights of way, easements and oil and gas leases of record, and those visible to a physical inspection of the property including the visibility of activities and/or equipment indicating the drilling, storage, or pumping of oil and gas.

Also Subject to restrictions as listed in Deed Book 1298 at page 311 recorded in the Recorder of Deeds Office of Erie County.

BEING the same premises which Linda J. Jepson, single by Deed dated 07/03/1996, and recorded



07/03/1996 in the Office of the Recorder of Deeds in and for Erie County as Deed Book 449 and page 10, Instrument # 1996-042249, granted and conveyed unto William A. McCommons and Lisa A. McCommons, husband and wife, in fee.

PROPERTY ADDRESS: 8372 Lowe Road, McKean, PA 16426

PARCEL ID # 31010024000.

Attorney for Plaintiff:

Steven K. Eisenberg, Esquire

Stern and Eisenberg, LLP

The Pavilion

261 Old York Road, Suite 410

Jenkintown, PA 19046

(215) 572-8111

Jul. 29 and Aug. 5, 12

**SALE NO. 16**

**Ex. #15390 of 2010**

**Financial Freedom Acquisition, LLC**

**v.**

**Penelope McChesney, Known Surviving Heir of Patricia A. Sproveri, Deceased Mortgagor and Real Owner, Phillip**

**Sproveri, Known Surviving Heir of Patricia A. Sproveri, Deceased Mortgagor and Real Owner and Unknown Surviving Heirs of Patricia A. Sproveri, Deceased Mortgagor and Real Owner**  
**SHORT DESCRIPTION**

By virtue of a Writ of Execution filed to No. 15390-2010 Financial Freedom Acquisition, LLC v. Penelope McChesney, Known

Surviving Heir of Patricia A. Sproveri, Deceased Mortgagor and Real Owner, Phillip Sproveri, Known Surviving Heir of Patricia A. Sproveri, Deceased Mortgagor and Real Owner and Unknown Surviving Heirs of Patricia A. Sproveri, Deceased Mortgagor and Real Owner, owners of property situated in the Township of Erie County, Pennsylvania being 107 West Irving Street, Corry, Pennsylvania 16407.

Tax I.D. No. 7-14-38-6

Assessment: \$ 62,693.55

McCabe, Weisberg and Conway, P.C.

123 South Broad Street, Suite 2080 Philadelphia, PA 19109

Jul. 29 and Aug. 5, 12



- ⊕ DOMESTIC, CIVIL, CRIMINAL
- ⊕ WRITTEN STATEMENTS
- ⊕ SURVEILLANCE
- ⊕ WIRETAP/"BUG" DETECTION
- ⊕ POLYGRAPH

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Investigator

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AUDIT LIST  
NOTICE BY  
PATRICK L. FETZNER

Clerk of Records,  
Register of Wills and Ex-Officio Clerk of  
the Orphans' Court Division, of the  
Court of Common Pleas of Erie County, Pennsylvania

The following Executors, Administrators, Guardians and Trustees have filed their Accounts in the Office of the Clerk of Records, Register of Wills and Orphans' Court Division and the same will be presented to the Orphans' Court of Erie County at the Court House, City of Erie, on **Monday, July 25, 2011** and confirmed Nisi.

**August 18, 2011** is the last day on which Objections may be filed to any of these accounts.

Accounts in proper form and to which no Objections are filed will be audited and confirmed absolutely. A time will be fixed for auditing and taking of testimony where necessary in all other accounts.

<u>2011</u>	<u>ESTATE</u>	<u>ACCOUNTANT</u>	<u>ATTORNEY</u>
169.	Casimiera T. Heynoski .....	Gladys Wood, Executrix .....	Ritchie T. Marsh, Esq.
170.	Anthony F. Giacobello .....	Madeline M. Wolf, Executrix .....	Gregory A. Karle, Esq.
171.	Helen C. Wright .....	Mary Ann Curtze, Executrix	
172.	Andrew E. Schaeffer		
	a/k/a Andrew Schaeffer .....	Suzanne Meyer, Executrix .....	Ronald J. Susmarski, Esq.

PATRICK L. FETZNER  
Clerk of Records  
Register of Wills &  
Orphans' Court Division

Jul. 22, 29



**ESTATE NOTICES**

Notice is hereby given that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same and all persons indebted to said estates are requested to make payment without delay to the executors or their attorneys named below.

**FIRST PUBLICATION**

**CERIO, NICK A.,  
a/k/a NICHOLAS CERIO,  
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania  
*Executrix:* Judith A. Hart, c/o 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508  
*Attorney:* Darlene M. Vlahos, Esquire, 3305 Pittsburgh Avenue, Erie, PA 16508

**FORSTER, SUSAN V. C.,  
deceased**

Late of Fairview Township, Erie County, Pennsylvania  
*Co-Executors:* Rebecca H. Forster and Nancy Lane Nelson, c/o Jerome C. Wegley, Esq., 120 West Tenth Street, Erie, PA 16501  
*Attorney:* Jerome C. Wegley, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**GEHRLEIN, DONALD J.,  
deceased**

Late of Millcreek Township, Erie County, Pennsylvania  
*Executrix:* Jennifer L. Kelly, c/o Raymond A. Pagliari, Esq., 558 West Sixth Street, Erie, Pennsylvania 16507  
*Attorney:* Raymond A. Pagliari, Esq., 558 West Sixth Street, Erie, Pennsylvania 16507

**GORNICK, STEVE A.,  
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania  
*Executrix:* Alethea A. Cassidy, 523 Jacksonia St., Pittsburgh PA 15212  
*Attorney:* None

**KARAI SZ, GEORGE N.,  
a/k/a GEORGE KARAI SZ,  
deceased**

Late of the Township of Millcreek  
*Executrix:* Lillian Karaisz  
*Attorney:* Michael G. Nelson, Esquire, Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, 300 State Street, Suite 300, Erie, Pennsylvania 16507

**KITCHENER, GEORGE D.,  
deceased**

Late of North East Township, Erie County, North East, Pennsylvania  
*Executrix:* David H. Kitchener, c/o Robert J. Jeffery, Esq., 33 East Main Street, North East, Pennsylvania 16428  
*Attorney:* Orton & Jeffery, P.C., 33 East Main Street, North East, Pennsylvania 16428

**KRACK, LYDIA H.,  
deceased**

Late of the Township of Millcreek  
*Executor:* Howard W. Krack, 8774 Laurel Drive, Erie, PA 16509  
*Attorney:* Michael A. Fetzner, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**KRAUSE, BETTY M.,  
deceased**

Late of the City of Erie  
*Co-Executrices:* Susan A. Hulick and Sandra Kaye Krause, c/o Sikov and Love, P.A., 428 Forbes Avenue, Suite 1400, Pittsburgh, PA 15219  
*Attorney:* Carol Sikov Gross, CELA, Sikov and Love, P.A., 428 Forbes Avenue, Suite 1400, Pittsburgh, PA 15219

**MENUTO, MARY K.,  
deceased**

Late of the City of Erie, County of Erie, and State of Pennsylvania  
*Executrix:* Pamela Menuto Booth, 1400 Solar Drive, Holiday, FL 34691  
*Attorney:* Richard T. Ruth, Esq., 1026 West 26th St., Erie, PA 16508

**OLSON, A. MARIE,  
deceased**

Late of the County of Erie, Commonwealth of Pennsylvania  
*Administrator:* Carl M. Olson, 420 Chestnut Street, Pleasantville, PA 16341  
*Attorney:* Thomas S. Talarico, Esquire, Talarico & Niebauer, 558 West Sixth St., Erie, PA 16507

**WALTERS, ROBERT D., SR.,  
deceased**

Late of the City of Erie, County of Erie, State of Pennsylvania  
*Executor:* Robert D. Walters, Jr., c/o 78 East Main Street, North East, PA 16428  
*Attorney:* John C. Brydon, Esq., Brydon Law Office, 78 East Main Street, North East, PA 16428

**SECOND PUBLICATION**

**BEVERIDGE, WILLIAM S., JR.,  
a/k/a WILLIAM S.  
BEVERIDGE, III,  
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania  
*Co-Executors:* William S. Beveridge, IV and Karen L. Rebar, c/o 504 State Street, 3rd Floor, Erie, PA 16501  
*Attorney:* Michael J. Nies, Esquire, 504 State Street, 3rd Floor, Erie, PA 16501



**DeROOY, CAROL J.,  
deceased**

Late of the Township of Millcreek, Commonwealth of Pennsylvania

*Executrix:* Linda M. Brooks, c/o Joseph B. Spero, Esquire, 3213 West 26th Street, Erie, Pennsylvania 16506

*Attorney:* Joseph B. Spero, Esquire, 3213 West 26th Street, Erie, Pennsylvania 16506

**DOUGHTY, EDWARD M., a/k/a  
EDWARD DOUGHTY, a/k/a  
ED M. DOUGHTY, a/k/a  
ED DOUGHTY,  
deceased**

Late of the Borough of Girard, County of Erie, State of Pennsylvania

*Executor:* Dennis D. Doughty, 110 Walnut Street, Girard, Pennsylvania 16417

*Attorney:* Grant M. Yochim, Esq., Steadman Law Office, 24 Main St. E., Girard, Pennsylvania 16417

**HAGER, JOSEPH J. JR.,  
deceased**

Late of the Township of Harborcreek, Erie County, Pennsylvania

*Administratrix:* Carol A. Hager, 558 West Sixth Street, Erie, Pennsylvania 16507-1129

*Attorney:* Raymond A. Pagliari, Esq., 558 West Sixth Street, Erie, Pennsylvania 16507-1129

**KMECIK, STEPHEN G., a/k/a  
STEPHEN KMECIK,  
deceased**

Late of the Township of Springfield, County of Erie and Commonwealth of Pennsylvania

*Executrix:* Carol A. Struchen, c/o 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508

*Attorney:* Darlene M. Vlahos, Esquire, 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508

**KOENIG, THEODORE A.,  
deceased**

Late of the City of Erie, Commonwealth of Pennsylvania  
*Administrator:* Timothy V. Koenig, c/o Joseph B. Spero, Esquire, 3213 West 26th Street, Erie, Pennsylvania 16506

*Attorney:* Joseph B. Spero, Esquire, 3213 West 26th Street, Erie, Pennsylvania 16506

**MANGANARO, SCOTT A.,  
a/k/a TOMMY MANGANARO,  
deceased**

Late of Millcreek Township  
*Executrix:* Megan N. Rainbow, c/o Jeffrey D. Scibetta, Esq., 120 West Tenth Street, Erie, PA 16501

*Attorney:* Jeffrey D. Scibetta, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**RESCH, MARGIT,  
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania  
*Executrix:* Marianna Z. Rhodes, 4131 W. Lake Road, Erie, PA 16505

*Attorney:* Greg Allison, Esq., Allison Law Associates, LLC, 600 Grant Street, Suite 660, Pittsburgh, PA 15219

**SCHAAF, WILL J.,  
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania

*Executor:* William J. Schaaf, Suite 300, 300 State Street, Erie, PA 16507

*Attorneys:* Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, Suite 300, 300 State Street, Erie, PA 16507

**SIEMBIDA, HELEN R.,  
deceased**

Late of the City of Erie, Commonwealth of Pennsylvania  
*Executrix:* Elaine M. Kowicki, c/o Joseph B. Spero, Esquire, 3213 West 26th Street, Erie, Pennsylvania 16506

*Attorney:* Joseph B. Spero, Esquire, 3213 West 26th Street, Erie, Pennsylvania 16506

**THIRD PUBLICATION**

**BERARDUCCI, RONALD L.,  
deceased**

Late of the City of Erie  
*Administratrix:* Margaret E. Perkins, 1164 West 23rd Street, Erie, PA 16502

*Attorney:* Michael A. Fetzner, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**CARPENTER, JAMES ARTHUR,  
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania

*Administratrix:* Annetta M. Hochstetler, c/o 504 State Street, Suite 300, Erie, PA 16501

*Attorney:* Alan Natalie, Esquire, 504 State Street, Suite 300, Erie, PA 16501

**GRAY, BERNARD F.,  
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania

*Co-Administrators:* James E. Gray and Michael J. Gray, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506  
*Attorney:* James F. Toohey, Esquire, Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**HANLIN, DAVID J.,  
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania

*Executrix:* Mary C. Hanlin, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

*Attorney:* I. John Dunn, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508



**HEIDELBERG, BRENDA J.,  
deceased**

Late of Erie, Erie County,  
Pennsylvania  
*Administrator:* Lisa A.  
Heidelberg, 231 Short Street,  
Erie, PA 16507  
*Attorney:* Michael J. Graml, Esq.,  
714 Sassafra Street, Erie, PA  
16501

**MUNDKOWSKY, LAVINA M.,  
a/k/a LAVINA MUNDKOWSKI,  
deceased**

Late of the Borough of Girard,  
County of Erie, State of  
Pennsylvania  
*Executrix:* Linda Swift, 11951  
Eureka Road, Edinboro,  
Pennsylvania 16412  
*Attorney:* James R. Steadman,  
Esq., 24 Main St. E., Girard,  
Pennsylvania 16417

**NIEBAUER, ANTONINA C.,  
a/k/a A. CLARA NIEBAUER,  
deceased**

Late of the City of Erie, County  
of Erie, Commonwealth of  
Pennsylvania  
*Executor:* Donald A. Niebauer,  
1412 Patterson Avenue, Erie,  
Pennsylvania 16508  
*Attorneys:* MacDonald, Illig,  
Jones & Britton, LLP, 100  
State Street, Suite 700, Erie,  
Pennsylvania 16507-1459

**SAMOKAR, DEANNA M.,  
deceased**

Late of the Township of Greene,  
County of Erie and State of  
Pennsylvania  
*Administratrix:* Connie L.  
Sackett, c/o Howard A. Hain,  
Esq., 821 State Street, Erie, PA  
16501  
*Attorney:* Howard A. Hain, Esq.,  
821 State Street, Erie, PA 16501

**SANNER, MARION E.,  
deceased**

Late of Millcreek Township, Erie  
County, Pennsylvania  
*Executor:* David G. Sanner, c/o  
120 West Tenth Street, Erie, PA  
16501  
*Attorney:* Christine Hall McClure,  
Esq., Knox McLaughlin Gornall  
& Sennett, P.C., 120 West Tenth  
Street, Erie, PA 16501

**SCHMITT, ROBERT J.,  
deceased**

Late of Millcreek Township  
*Executor:* Charles T. Schmitt,  
c/o 332 East 6th Street, Erie, PA  
16507-1610  
*Attorney:* Evan E. Adair, Esq.,  
Williams and Adair, 332 East 6th  
Street, Erie, PA 16507-1610

**WASSINK, CLEOPHA B.,  
deceased**

Late of the Township of North  
East, Erie County  
*Executrix:* Judith E. Wilson, c/o  
James S. Bryan, Esq., 11 Park  
Street, North East, PA 16428  
*Attorney:* James S. Bryan, Esq.,  
Knox McLaughlin Gornall &  
Sennett, P.C., 11 Park Street,  
North East, PA 16428

**ZAREMBA, HENRY,  
deceased**

Late of the City of Erie  
*Executor:* Christopher Zaremba,  
12 Newberry Drive, Endicott,  
New York, 13760-4341  
*Attorney:* None



## CHANGES IN CONTACT INFORMATION OF ECBA MEMBERS

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