

**APPLICATION FOR NOMINATION TO THE TWELFTH JUDICIAL CIRCUIT COURT**

(Please attach additional pages as needed to respond fully to questions.)

**DATE:** May 2, 2013 Florida Bar No.: 0164089

**GENERAL:** Social Security No.: [REDACTED]

1. Name Deborah Ann Bailey E-mail: dabailey@jud12.flcourts.org

Date Admitted to Practice in Florida: April 23, 1999

Date Admitted to Practice in other States: November 8, 1993 (Ohio)

2. State current employer and title, including professional position and any public or judicial office.

State of Florida, Twelfth Judicial Circuit - General Magistrate

3. Business address: 2071 Ringling Boulevard, Sixth Floor

City Sarasota County Sarasota State FL ZIP 34237

Telephone (941) 861-4866 FAX (941) 861-4865

4. Residential address: [REDACTED]

City [REDACTED]

Since March 1998 Telephone [REDACTED]

5. Place of birth: Neptune City, NJ

Date of birth: [REDACTED] Age: 56

6a. Length of residence in State of Florida: 15 years

6b. Are you a registered voter?  Yes  No

If so, in what county are you registered? Pinellas

7. Marital status: Single

If married: Spouse's name \_\_\_\_\_

Date of marriage \_\_\_\_\_

Spouse's occupation \_\_\_\_\_

If ever divorced give for each marriage name(s) of spouse(s), current address for each former spouse, date and place of divorce, court and case number for each divorce.

Former spouse: George A. Howard, Jr. I am not aware of his current residence address. An Internet search revealed a listing on LinkedIn indicating that he currently works for a company located in Jackson, TN.

Final Judgment of Divorce granted March 5, 1990; Superior Court of New Jersey, Monmouth County, Chancery Division (Family Part), Docket No. M-12057-90.

8. Children  
*Name(s)*                      *Age(s)*              *Occupation(s)*              *Residential address(es)*  
None

9. Military Service (including Reserves)  
*Service*                      *Branch*                      *Highest Rank*                      *Dates*  
None  
Rank at time of discharge \_\_\_\_\_ Type of discharge \_\_\_\_\_  
Awards or citations \_\_\_\_\_

**HEALTH:**

10.

11a.

11b.



12a.

12b.

13.

14.

15.

16.

17.



**EDUCATION:**

18a. Secondary schools, colleges and law schools attended. \*continued on a separate page

<i>Schools</i>	<i>Class Standing</i>	<i>Dates of Attendance</i>	<i>Degree</i>
Asbury Park High School	Top 10%	9/70 - 6/74	Diploma
West Chester State College	Top third	9/74 - 5/78	B.S.
Dover Business College	Top 5%	9/80 - 6/81	Medical Secretarial Diploma
Monmouth College	Top 5%	1/89 - 10/89	Paralegal Certificate

18b. List and describe academic scholarships earned, honor societies or other awards.

High School: I was a four-year Varsity Scholar and a member of Kiwanis Honor Society and National Honor Society in my sophomore, junior and senior years.

West Chester State College: I graduated cum laude.

Dover Business College: I graduated with the highest average in the medical secretarial curriculum.

University of Dayton School of Law: I graduated cum laude, ranked 10 out of 153 students with a final GPA of 3.30. I received the National Association of Women Lawyers Outstanding Women Graduate Award.

**NON-LEGAL EMPLOYMENT:** \*continued on a separate page

19. List all previous full-time non-legal jobs or positions held since 21 in chronological order and briefly describe them.

<i>Date</i>	<i>Position</i>	<i>Employer</i>	<i>Address</i>
6/78 - 5/79	Public Health Educator	Asbury Park Health Dept.	Sewell Avenue Asbury Park, NJ
7/81-9/84	Medical Secretary	Bertram M. Kummel, M.D.	Madison Avenue Morristown, NJ
10/84-1/87	Claims clerk	CNA Insurance Companies	Ridgedale Avenue Cedar Knolls, NJ
3/87 - 6/88	Medical secretary	Nephrology Hypertension Assocs.	Madison Avenue Morristown, NJ

**PROFESSIONAL ADMISSIONS:** \*continued on a separate page

20. List all courts (including state bar admissions) and administrative bodies having special admission requirements to which you have ever been admitted to practice, giving the dates of admission, and if applicable, state whether you have been suspended or resigned.

<i>Court or Administrative Body</i>	<i>Date of Admission</i>
State of Ohio (currently inactive)	November 8, 1993

**LAW PRACTICE:** (If you are a sitting judge, answer questions 21 through 26 with reference to the years before you became a judge.) \*continued on a separate page

21. State the names, dates and addresses for all firms with which you have been associated in practice, governmental agencies or private business organizations by which you have been employed, periods you have practiced as a sole practitioner, law clerkships and other prior employment:

<i>Position</i>	<i>Name of Firm</i>	<i>Address</i>	<i>Dates</i>
Summer Law Clerk	Gross & Hanlon	West Main Street, Freehold, NJ	5/91 - 8/91
Law Clerk	Ruppert, Bronson, Chicarelli & Smith	610 N. Main Street, Springboro, OH	5/92 - 5/93
Associate	Ruppert, Bronson, Chicarelli & Smith	610 N. Main St., Springboro, OH	5/93 - 3/98
Law Clerk/Attorney	Hillsborough County Attorney's Office	601 E. Kennedy Blvd., Tampa, FL	4/98 - 3/00

22. Describe the general nature of your current practice including any certifications which you possess; additionally, if your practice is substantially different from your prior

practice or if you are not now practicing law, give details of prior practice. Describe your typical clients or former clients and the problems for which they sought your services.

My experience as an associate in private practice was with Ruppert, Bronson, Chicarelli & Smith in Springboro, Ohio. I practiced primarily in the areas of family law and personal bankruptcy. My family law experience involved litigating divorce and dissolution cases, as well as custody and visitation matters. The only cases I litigated to final judgment were contested divorce cases before a trial judge. My bankruptcy practice included the preparation and filing of Chapter 7 and Chapter 13 personal bankruptcy petitions and attending the hearings attendant to these proceedings in the federal court in Dayton, Ohio. I also defended any adversary actions involving my debtor-clients. My remaining duties with Ruppert Bronson involved researching and writing the majority of summary judgment motions, trial motions, and appeals for cases being handled by the partners in the firm. Most of this writing involved civil matters, with a lesser percentage of criminal and administrative motions and appeals. The percentages listed in No. 23 below are reflective of my practice with the Ruppert Bronson firm.

A highlight of my experience at Ruppert Bronson was the opportunity to co-author the Respondent's Brief in the case of Ohio v. Robinette, filed in the United States Supreme Court. The brief is accessible on Westlaw at 1996 WL 312162. I attended the oral arguments held before the United States Supreme Court on October 8, 1996, with my senior partner, James D. Ruppert.

After moving to Florida in 1998, I worked at the Hillsborough County Attorney's Office as a law clerk from May 1998 until December 1999. I performed legal research and analyzed issues for deputy county attorneys working in the Infrastructure Division. In December 1999, I accepted a position as a deputy county attorney in the Infrastructure Division, responsible for analyzing and reviewing contracts, work orders, and change orders on public projects. I worked solely in the office; the position did not involve any court appearances.

In March 2000 I accepted a position as a Staff Attorney with the Twelfth Judicial Circuit and have been employed in the Circuit since that time.

23. What percentage of your appearance in courts in the last five years or last five years of practice (include the dates) was in:

Court		Area of Practice	
Federal Appellate	<u>0</u> %	Civil	<u>50</u> %
Federal Trial	<u>0</u> %	Criminal	<u>10</u> %
Federal Other	<u>15</u> %	Family	<u>25</u> %
State Appellate	<u>0</u> %	Probate	<u>0</u> %
State Trial	<u>75</u> %	Other	<u>15</u> %
State Administrative	<u>10</u> %		
State Other	<u>0</u> %		
	<u>        </u> %		
TOTAL	<u>100</u> %	TOTAL	<u>100</u> %

24. In your lifetime, how many (number) of the cases you have tried to verdict or judgment were:

Jury?	<u>0</u>	Non-jury?	<u>0</u>
Arbitration?	<u>0</u>	Administrative Bodies?	<u>0</u>

25. Within the last ten years, have you ever been formally reprimanded, sanctioned, demoted, disciplined, placed on probation, suspended or terminated by an employer or tribunal before which you have appeared? If so, please state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

No

26. In the last ten years, have you failed to meet any deadline imposed by court order or received notice that you have not complied with substantive requirements of any business or contractual arrangement? If so, please explain in full.

No

**(Questions 27 through 30 are optional for sitting judges who have served 5 years or more.)**

27a. For your last 6 cases, which were tried to verdict before a jury or arbitration panel or tried to judgment before a judge, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases).

The cases I tried to final judgment before a trial judge would be family law matters, which are in excess of 15 years old at this time and were litigated in Ohio. The firm I worked for in Ohio does not exist in the same form anymore. Therefore, I do not have better access to this information.

27b. For your last 6 cases, which were settled in mediation or settled without mediation or trial, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases).

N/A

27c. During the last five years, how frequently have you appeared at administrative hearings?  
0 average times per month

27d. During the last five years, how frequently have you appeared in Court?  
104 average times per month

27e. During the last five years, if your practice was substantially personal injury, what percentage of your work was in representation of plaintiffs? \_\_\_\_\_%  
Defendants? \_\_\_\_\_%

28. If during any prior period you have appeared in court with greater frequency than during the last five years, indicate the period during which this was so and give for such prior periods a succinct statement of the part you played in the litigation, numbers of cases and whether jury or non-jury.

Please refer to my answers to No. 22 and No. 27a above.

29. For the cases you have tried to award in arbitration, during each of the past five years, indicate whether you were sole, associate or chief counsel. Give citations of any reported cases.

N/A

30. List and describe the six most significant cases which you personally litigated giving case style, number and citation to reported decisions, if any. Identify your client and describe the nature of your participation in the case and the reason you believe it to be significant. Give the name of the court and judge, the date tried and names of other attorneys involved.

Please refer to my answer to No. 27a above.

31. Attach at least one example of legal writing which you personally wrote. If you have not personally written any legal documents recently, you may attach writing for which you had substantial responsibility. Please describe your degree of involvement in preparing the writing you attached.

Attached

#### **PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE:**

- 32a. Have you ever held judicial office or been a candidate for judicial office? If so, state the court(s) involved and the dates of service or dates of candidacy.

No

- 32b. List any prior quasi-judicial service:

<i>Dates</i>	<i>Name of Agency</i>	<i>Position Held</i>
2/05 - present	Twelfth Judicial Circuit	General Magistrate

Types of issues heard: Presently, I hear general civil matters, including all types of non-dispositive motions directed to pleadings and discovery motions. Over the past several years, I have also heard Marchman Acts, Baker Acts, child support establishment and enforcement issues, dependency judicial reviews, and collections court.

- 32c. Have you ever held or been a candidate for any other public office? If so, state the office, location and dates of service or candidacy.

No

- 32d. If you have had prior judicial or quasi-judicial experience,

- (i) List the names, phone numbers and addresses of six attorneys who appeared before you on matters of substance.



Michael J. Belle, Esq., 2364 Fruitville Rd., Sarasota, FL 34237; 941-955-9212  
Damian B. Mallard, Esq., 3431 Magic Oak Lane, Sarasota, FL 34242; 941-952-1682  
W. Andrew Clayton, Esq., 1 No. Tuttle Avenue, Sarasota, FL 34237; 941-951-0707  
Jennifer L. Grosso, Esq., 200 So. Orange Ave., Sarasota, FL 34236; 941-366-4800  
Elizabeth M. Boyle, Esq., 1750 17<sup>th</sup> St., Unit I, Sarasota, FL 34234; 941-366-1746  
H. Daniel McKillop, Esq., 1800 Second Street, Suite 705, Sarasota, FL; 941-400-8998

- (ii) Describe the approximate number and nature of the cases you have handled during your judicial or quasi-judicial tenure.

Number of civil motion hearings over the past eight years is as follows:

2005 - 493 hearings; 2006 - 560 hearings; 2007 - 791 hearings; 2008 - 867 hearings;  
2009 - 933 hearings; 2010 - 1473 hearings; 2011 - 1262 hearings; 2012 - 1728 hearings

The above numbers do not include two non-jury trials in 2005; Baker Act hearings from 2005-2009; Marchman Act hearings from 2006-2009; and dependency judicial reviews during the years 2006-2008.

- (iii) List citations of any opinions which have been published.

The following opinions are reported in the Florida Law Weekly Supplement. They are Orders adopting the Magistrate's Recommended Order in full.

First Franklin Financial Corp. v. Quinlan, 17 Fla. L. Weekly Supp. 787a (12<sup>th</sup> Cir. Ct. June 21, 2010) (case is ongoing).

Hennige v. University Property & Casualty Inc. Co., 17 Fla. L. Weekly Supp. 1211b (12<sup>th</sup> Cir. Ct. Aug. 18, 2010) (case voluntarily dismissed by Plaintiff on Oct. 20, 2011).

McClendon v. Nationstar Mortgage, LLC, 18 Fla. L. Weekly Supp. 837a (12<sup>th</sup> Cir. Ct. May 24, 2011) (case is ongoing).

- (iv) List citations or styles and describe the five most significant cases you have tried or heard. Identify the parties, describe the cases and tell why you believe them to be significant. Give dates tried and names of attorneys involved.

1. Mather of Sarasota, Inc. v. Joshua Rosen and Susie King, Case No. 2003 CA 017998 NC, a non-jury trial heard on April 12 and April 13, 2005. For the Plaintiff: Michael Moran, 2197 Ringling Boulevard, Sarasota, FL 34237. For the Defendant: John J. Waskom, Icard Merrill, 2033 Main Street, Sarasota, FL 34237.

The complaint was a relatively straightforward two-count breach of contract action. The more interesting part of the trial involved Ms. King's counterclaim against Mather for violations of the Florida Consumer Collection Practices Act. After trial, I issued a final judgment with findings of fact and conclusions of law that was adopted by

Judge Becky Titus. Several months later, I conducted another hearing on the entitlement to attorney's fees, which resulted in another final judgment. These judgments were not appealed. This case was significant to me because it was my first non-jury trial after taking on full-time duties as a general magistrate.

2. BA v. Dewane, Case No. 2009 CA 006960 NC; heard on October 6, 2010, on Defendant's Motion to Compel Deposition and Plaintiffs' Amended Motion for Protective Order and Motion for Videotape Deposition of a Minor Pursuant to § 92.53, Florida Statutes. For the Plaintiffs: Damian B. Mallard, Mallard Law Firm, 3431 Magic Oak Lane, Sarasota, FL 34232. For the Defendant: Robert C. Sherman, Henderson, Franklin, Starnes & Holt, P.A., 1715 Monroe Street, Fort Myers, FL 33901.

This case involved allegations of improper discipline and punishment of a child at a preschool. The claims involved negligence, breach of fiduciary duty, and negligent hiring, retention and supervision of the teachers. The cross motions heard on October 6, 2010, addressed the deposition of, and appropriate limitations to be placed on, the deposition of the minor child who was the subject of the punishment.

The case was significant for the issue it presented, i.e., whether or not the Plaintiffs had the right to videotape the deposition under section 92.53, Florida Statutes, and Florida Rule of Civil Procedure 1.330(a)(3)(E), in order to use the deposition in lieu of having the child testify in open court at trial. Plaintiffs argued that section 92.53 established "exceptional circumstances" as that term is used in Rule 1.330(a)(3)(E). To resolve this issue, I considered the testimony of the child's treating psychologist and interpreted the requirements of the statute and the civil rule. I ruled that the Plaintiffs had not met their burden to establish the requirements that would permit them to use the videotaped deposition testimony in lieu of live testimony at trial. The Plaintiffs took exceptions to this ruling, which were ultimately overruled by the judge.

3. SunTrust Mortgage, Inc. v. Samuels, et al., Case No. 2011 CA 000988 NC, heard on September 11, 2012, on the Defendant's Motion to Compel Discovery. For the Plaintiff: Matthew Hearne, Law Offices of Marshall C. Watson, P.A., 1800 NW 49th Street, Fort Lauderdale, FL 33309. For the Defendant, William A. Samuels, pro se, 2474 Wood Oak Drive, Sarasota, FL 34232.

This is a foreclosure case filed in February 2011, involving a pro se defendant. In March and April of 2011, the Defendant served the Plaintiff with three discovery requests, one request to produce and two sets of interrogatories. At the time of the hearing on September 11, 2012, the Plaintiff had yet to respond to the Defendant's discovery requests.

Given the large number of foreclosure cases pending across the State of Florida, this case is significant because it highlights an ongoing problem with large volume foreclosure firms: (1) lack of continuity of representation of a plaintiff, i.e., the failure to have one attorney assigned to handle a foreclosure case as it progresses; and (2) lack of communication between attorneys and staff in large

volume foreclosure firms. The Recommended Order from the hearing reflects that nine (9) attorneys from the firm representing SunTrust had either signed pleadings or appeared at court hearings during the 19 months the case was pending. Several different attorneys had appeared at hearings before me and the issue of discovery had been discussed at many hearings on other issues; however, not one of the attorneys had taken the responsibility to follow up and determine whether discovery had been answered.

The case is also significant because the pro se defendant submitted this particular ruling to the Florida Bar. I was contacted by the Bar's regional disciplinary counsel in October 2012 and was advised of an ongoing investigation into the activities of the Watson firm and that the Bar would be recommending that some form of discipline be imposed on the firm.

4. Dale K. Ehrhart, Inc. v. Gerard F. Stellwagen and Wealth Advisors, LLC., Case No. 2007 CA 000658 SC, heard on July 21, 2010, and October 13, 2010, on the Defendants' Motion for Sanctions and Other Relief. For the Plaintiff: Michael E. Siegel, Livingston, Patterson, Strickland & Siegel, P.A., 46 N. Washington Blvd., Suite 1, Sarasota, FL 34236. For the Defendants: W. Andrew Clayton, Jr., Johnson, Browning & Clayton, 1 North Tuttle Avenue, Sarasota, FL 34237.

This action arose from a former employment relationship between Stellwagen and the Plaintiff. Severance terms were negotiated under which the Plaintiff paid Stellwagen over a period of years. Ultimately, a dispute arose, and the Plaintiff filed an action for declaratory judgment. Stellwagen counterclaimed for breach of contract, unjust enrichment, constructive trust and an accounting. Defendants' motion raised significant allegations of discovery misconduct involving electronically stored information ("ESI"), including allegations of spoliation. The motion led to a multi-hour evidentiary hearing, the central issue of which was the Plaintiff's computer storage and archiving procedures for ESI. Expert testimony was presented by both parties on the issue of spoliation. The hearing also led to an in camera review of several documents for which the Plaintiff was claiming privilege.

This case is significant from the standpoint of the knowledge gained from the Defendants' expert, John Jorgensen, about the manner in which information is stored, deleted, overwritten, and recovered on a computer and how forensic analysis of a hard drive is conducted. Information gained during this hearing has assisted me in later cases when I have been confronted with other ESI issues.

5. Sam Kazran, et al. v. Vernon G. Buchanan, et al., Case No. 2008 CA 015448 NC, heard on over 20 different pleading and discovery motions from 2009 through 2013. For the Plaintiffs: Robert Stok and Joshua Kon, Stok Folk & Kon, Harbour Centre, Suite 1005, 18851 NE 29th Avenue, Aventura, FL 33180. For the Defendants: Frank H. Killgore, Jr., and Michael A. Semanie, Killgore, Pearlman, Stamp, Ornstein & Squires, P.A., P.O. Box 1913 Orlando, FL 32802-1913.

At its core, this case involves a failed business relationship between Sam Kazran and Vernon G. Buchanan regarding various automobile dealerships. The case is

significant because it involves a high-profile litigant, a sitting Congressman, who, during the pendency of this action, was also being investigated by the House Ethics Committee and the Department of Justice regarding certain alleged campaign improprieties. Plaintiff has imported allegations regarding these improprieties into his claims against Buchanan in the action. As a result, the media is usually interested in the hearings that take place in this case. The case has been significant in terms of my time investment. Many motions have been filed regarding the sufficiency of the pleadings. I have also addressed numerous discovery issues, including some challenging attorney-client privilege issues, resulting from the fact that attorneys from several law firms represent Mr. Buchanan on various matters.

- (v) Has a complaint about you ever been made to the Judicial Qualifications Commission? If so, give date, describe complaint, whether or not there was a finding of probable cause, whether or not you have appeared before the Commission, and its resolution.

No

- (vi) Have you ever held an attorney in contempt? If so, for each instance state name of attorney, approximate date and circumstances.

No

- (vii) If you are a quasi-judicial officer (ALJ, Magistrate, General Master), have you ever been disciplined or reprimanded by a sitting judge? If so, describe.

No

#### **BUSINESS INVOLVEMENT:**

- 33a. If you are now an officer, director or otherwise engaged in the management of any business enterprise, state the name of such enterprise, the nature of the business, the nature of your duties, and whether you intend to resign such position immediately upon your appointment or election to judicial office.

N/A

- 33b. Since being admitted to the Bar, have you ever been engaged in any occupation, business or profession other than the practice of law? If so, give details, including dates.

No

- 33c. State whether during the past five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise, institution, organization, or association of any kind. If so, identify the source of such compensation, the nature of the business enterprise, institution, organization or association involved and the dates such compensation was paid and the amounts.

No

**POSSIBLE BIAS OR PREJUDICE:**

34. The Commission is interested in knowing if there are certain types of cases, groups of entities, or extended relationships or associations which would limit the cases for which you could sit as the presiding judge. Please list all types or classifications of cases or litigants for which you as a general proposition believe it would be difficult for you to sit as the presiding judge. Indicate the reason for each situation as to why you believe you might be in conflict. If you have prior judicial experience, describe the types of cases from which you have recused yourself.

Possible conflict with dependency cases in the Twelfth Circuit due to a personal relationship.

**MISCELLANEOUS:**

- 35a. Have you ever been convicted of a felony or a first degree misdemeanor?  
Yes \_\_\_\_\_ No  X  If "Yes" what charges? \_\_\_\_\_  
Where convicted? \_\_\_\_\_ Date of Conviction: \_\_\_\_\_
- 35b. Have you pled nolo contendere or pled guilty to a crime which is a felony or a first degree misdemeanor?  
Yes \_\_\_\_\_ No  X  If "Yes" what charges? \_\_\_\_\_  
Where convicted? \_\_\_\_\_ Date of Conviction: \_\_\_\_\_
- 35c. Have you ever had the adjudication of guilt withheld for a crime which is a felony or a first degree misdemeanor?  
Yes \_\_\_\_\_ No  X  If "Yes" what charges? \_\_\_\_\_  
Where convicted? \_\_\_\_\_ Date of Conviction: \_\_\_\_\_
- 36a. Have you ever been sued by a client? If so, give particulars including name of client, date suit filed, court, case number and disposition.  
No
- 36b. Has any lawsuit to your knowledge been filed alleging malpractice as a result of action or inaction on your part?  
No
- 36c. Have you or your professional liability insurance carrier ever settled a claim against you for professional malpractice? If so, give particulars, including the amounts involved.  
No
- 37a. Have you ever filed a personal petition in bankruptcy or has a petition in bankruptcy been filed against you?  
No

37b. Have you ever owned more than 25% of the issued and outstanding shares or acted as an officer or director of any corporation by which or against which a petition in bankruptcy has been filed? If so, give name of corporation, your relationship to it and date and caption of petition.

No

38. Have you ever been a party to a lawsuit either as a plaintiff or as a defendant? If so, please supply the jurisdiction/county in which the lawsuit was filed, style, case number, nature of the lawsuit, whether you were Plaintiff or Defendant and its disposition.

Plaintiff in my divorce action; Superior Court of New Jersey, Monmouth County, Chancery Division (Family Part); Docket No. M-12057-90; final judgment entered March 5, 1990

39. Has there ever been a finding of probable cause or other citation issued against you or are you presently under investigation for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, or other professional group. If so, give the particulars.

No

40. To your knowledge within the last ten years, have any of your current or former co-workers, subordinates, supervisors, customers or clients ever filed a formal complaint or formal accusation of misconduct against you with any regulatory or investigatory agency, or with your employer? If so, please state the date(s) of such formal complaint or formal accusation(s), the specific formal complaint or formal accusation(s) made, and the background and resolution of such action(s). (Any complaint filed with JQC, refer to 32d(v).

No

41. Are you currently the subject of an investigation which could result in civil, administrative or criminal action against you? If yes, please state the nature of the investigation, the agency conducting the investigation and the expected completion date of the investigation.

No

42. In the past ten years, have you been subject to or threatened with eviction proceedings? If yes, please explain.

No

43a. Have you filed all past tax returns as required by federal, state, local and other government authorities?

Yes  No  If no, please explain. \_\_\_\_\_

43b. Have you ever paid a tax penalty?

Yes  No  If yes, please explain what and why. \_\_\_\_\_

43c. Has a tax lien ever been filed against you? If so, by whom, when, where and why?

No

**HONORS AND PUBLICATIONS:**

44. If you have published any books or articles, list them, giving citations and dates.  
Maternal Substance Abuse, Does Ohio Have an Answer, 17 Univ. of Dayton L. Rev. 1019 (Spring 1992).
45. List any honors, prizes or awards you have received. Give dates.  
National Association of Women Lawyers Outstanding Woman Graduate, 1993  
Who's Who Among American Law Students, 1991-1993  
Editor-in-Chief, University of Dayton Law Review, 1992-1993  
Member, National Family Law Moot Court Team, 1992  
Winner and Best Brief, Walter H. Rice Moot Court Competition, 1991  
Staff Member, University of Dayton Law Review, 1991-1992  
Dean Fredrick Davis Award for Excellence in Production Work, University of Dayton Law Review, 1991-1992  
Dean Richard L. Braun Award for Excellence in Legal Authorship, University of Dayton Law Review, 1991-1992  
American Jurisprudence Awards, 1991-1993, Editor-in-Chief, Law Review; Civil Trial Practice; Administrative Law; Legal Professions I; Contracts I
46. List and describe any speeches or lectures you have given.  
None, other than bar-related activities, set forth in 49(b)
47. Do you have a Martindale-Hubbell rating? Yes  If so, what is it? \_\_\_ No

**PROFESSIONAL AND OTHER ACTIVITIES:**

- 48a. List all bar associations and professional societies of which you are a member and give the titles and dates of any office which you may have held in such groups and committees to which you belonged.  
The Florida Bar  
Sarasota County Bar Association, Professionalism Committee, 2009 to present  
Master, John M. Scheb American Inn of Court, 2008 to present; Pupillage Group leader in 2010-2011
- 48b. List, in a fully identifiable fashion, all organizations, other than those identified in response to question No. 48(a), of which you have been a member since graduating from law school, including the titles and dates of any offices which you have held in each such organization.  
American Bar Association, Ohio State Bar Association, Warren County Bar Association, Dayton Women's Bar Association
- 48c. List your hobbies or other vocational interests.

Reading, kayaking, walking, bicycling

- 48d. Do you now or have you ever belonged to any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices and whether you intend to continue as a member if you are selected to serve on the bench.

No

- 48e. Describe any pro bono legal work you have done. Give dates.

As a full-time government-employed attorney since 1999 in Florida, I have not participated in pro bono legal work.

**SUPPLEMENTAL INFORMATION:**

- 49a. Have you attended any continuing legal education programs during the past five years? If so, in what substantive areas?

Yes. I have attended courses at the Florida College of Advanced Judicial Studies in evidence, electronic discovery, civil discovery, products liability, medical malpractice, communications law, and fiduciary duties in business disputes. I have also attended general CLE programs in civil trial practice, dealing with self-represented litigants, ethics, and Marchman and Baker Acts.

- 49b. Have you taught any courses on law or lectured at bar association conferences, law school forums, or continuing legal education programs? If so, in what substantive areas?

Presenter: "Social Networking and Legal Ethics," presented at Judge John M. Scheb American Inn of Court, October 12, 2010

Presenter: "Standards of Professionalism," at the Joint Sarasota and Manatee County Bar Association Luncheon Meeting, October 28, 2010

Presenter: "Standards of Professionalism - Newly Revised," at the Sarasota County Bar Association South County Division Membership Luncheon, February 23, 2011

Presenter: "Bankruptcy Law," presented at Judge John M. Scheb American Inn of Court, January 10, 2012

Presenter: "Motions to Compel" at "Basic Discovery 2012" on March 29, 2012, sponsored by the Florida Bar

Panelist: "Views from the Bench," at "Basic Discovery 2012" on March 29, 2012, sponsored by the Florida Bar

Panelist: "Lord of the Liens ... A Three Part Trilogy, Book 2: The Bench's Perspective on Foreclosures," presented at the Sarasota County Bar Association Real Property Section Luncheon, April 26, 2012

Panelist: Sarasota County Bar Association, Civil Trial Section, Brown Bag Luncheon, February 22, 2013

Panelist: Sarasota County Bar Association, Twelfth Judicial Circuit Foreclosure Update CLE, April 11, 2013



50. Describe any additional education or other experience you have which could assist you in holding judicial office.

Outside the courthouse, I have volunteered in the past as a literacy tutor, assisting adults with little, if any, reading skills to learn to read. I have also been involved with mission work in the Dominican Republic over the past several years. From 2006 through 2010, I traveled with others to the Dominican Republic on a yearly basis to bring clothing, shoes, school supplies, and other necessities for school children and their families at the Dominica School and Orphanage in La Ureña and the El Tamarindo School. During these trips, we participated in various school activities including teaching English and making arts and crafts for the holidays. We also assisted in various maintenance tasks, including yard work and painting.

These experiences have taught me the value of being able to relate to persons of diverse cultural, educational, and economic levels not just from a position of authority, but on a personal level.

51. Explain the particular potential contribution you believe your selection would bring to this position.

I have well-rounded experience in the Circuit in which I seek appointment. During the past 13 years, I have worked with most of the judges in this Circuit on a variety of issues. I am familiar with court processes and procedures and have the ability to "hit the ground running" with regard to an active case load. I have an assistant who is also versed in Circuit procedures and who competently and expediently handles the administrative functions of my office.

I have had exposure to many substantive areas of law that a circuit judge will encounter. As a staff attorney, I researched and wrote decisions and orders on a large number of criminal pretrial motions, postconviction motions, and extraordinary writs. As a general magistrate, I have served eight years in the circuit civil division with a proven record of handling a large case load. In calendar year 2012, I conducted over 1700 hearings in the circuit civil division. I not only handle civil matters, but also hear pleading and discovery motions arising in the probate division. I have extensive experience over the past four years in dealing with the large influx of pleading and discovery motions involved with the foreclosure crisis. As well, for approximately two years, I heard judicial reviews and motions dealing with visitation, placement, and reunification issues in the dependency division.

Finally, I have developed professional relationships with many area attorneys outside the courthouse doors through my committee work with the Sarasota County Bar Association and as a member of the John M. Scheb Inn of Court. This year, I am working with a Bar committee to plan a Circuit-wide bench-bar conference to be held in 2014.

52. If you have previously submitted a questionnaire or application to this or any other judicial nominating commission, please give the name of the commission and the approximate date of submission.

In February 2011, I submitted an application to the Merit Selection Panel for the United States District Court, Middle District of Florida, for a United States Magistrate Judge position.

53. Give any other information you feel would be helpful to the Commission in evaluating your application.

I bring to the bench my motivation and desire to serve those who appear before me. I always prepare for my court hearings, requiring counsel for the litigants to provide courtesy copies of their documents to me in advance of the hearing date. I actively listen to the litigants appearing before me, asking questions where necessary to clarify the issues. I strive to be fair and consistent when ruling on issues and to uphold the rule of law. At the same time, I recognize that there are times when judicial officers should exercise their discretion to "think outside the box" and fashion remedies that are within the rule of law, but are equitable as well.

**REFERENCES:**

54. List the names, addresses and telephone numbers of ten persons who are in a position to comment on your qualifications for judicial position and of whom inquiry may be made by the Commission.

Honorable Lee E. Haworth,  
Honorable Charles E. Roberts  
Honorable Rick DeFuria  
Honorable Donna Berlin  
Honorable Diana Moreland,  
Magistrate Rebecca L. Hunt  
Kevin Bruning  
Karen Trautman,  
Jan Jung,  
Anita Brass,

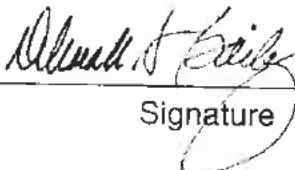
**CERTIFICATE**

I have read the foregoing questions carefully and have answered them truthfully, fully and completely. I hereby waive notice by and authorize The Florida Bar or any of its committees, educational and other institutions, the Judicial Qualifications Commission, the Florida Board of Bar Examiners or any judicial or professional disciplinary or supervisory body or commission, any references furnished by me, employers, business and professional associates, all governmental agencies and instrumentalities and all consumer and credit reporting agencies to release to the respective Judicial Nominating Commission and Office of the Governor any information, files, records or credit reports requested by the commission in connection with any consideration of me as possible nominee for appointment to judicial office. Information relating to any Florida Bar disciplinary proceedings is to be made available in accordance with Rule 3-7.1(l), Rules Regulating The Florida Bar. I recognize and agree that, pursuant to the Florida Constitution and the Uniform Rules of this commission, the contents of this questionnaire and other information received from or concerning me, and all interviews and proceedings of the commission, except for deliberations by the commission, shall be open to the public.

Further, I stipulate I have read, and understand the requirements of the Florida Code of Judicial Conduct.

Dated this 2nd day of May, 2013.

DEBORAH A. BAILEY  
Printed Name

  
Signature

*(Pursuant to Section 119.071(4)(d)(1), F.S.), . . . The home addresses and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from the provisions of subsection (1), dealing with public records.*

## FINANCIAL HISTORY

In lieu of answering the questions on this page, you may attach copies of your completed Federal Income Tax Returns for the preceding three (3) years. Those income tax returns should include returns from a professional association. If you answer the questions on this page, you do not have to file copies of your tax returns.

1. State the amount of gross income you have earned, or losses you have incurred (before deducting expenses and taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

Gross income reported on tax returns as taken from my W-2 form:

2012 - \$72,582.00; 2011 - \$73,719.00; 2010 - \$74,970

2. State the amount of net income you have earned, or losses you have incurred (after deducting expenses but not taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

Taxable income after itemized deductions as stated on tax returns:

2012 - 58,255.00; 2011 - \$59,362.00; 2010 - \$58,424.00

3. State the gross amount of income or losses incurred (before deducting expenses or taxes) you have earned in the preceding three years on a year by year basis from all sources other than the practice of law, and generally describe the source of such income or losses.

\$59.00 in interest income in 2011

4. State the amount of net income you have earned or losses incurred (after deducting expenses) from sources other than the practice of law for the preceding three-year period on a year by year basis, and generally describe the sources of such income or losses.

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## JUDICIAL APPLICATION DATA RECORD

The judicial application shall include a separate page asking applicants to identify their race, ethnicity and gender. Completion of this page shall be optional, and the page shall include an explanation that the information is requested for data collection purposes in order to assess and promote diversity in the judiciary. The chair of the Commission shall forward all such completed pages, along with the names of the nominees to the JNC Coordinator in the Governor's Office (pursuant to JNC Uniform Rule of Procedure).

(Please Type or Print)

Date: May 2, 2013

JNC Submitting To: Twelfth

Name (please print): Deborah A. Bailey

Current Occupation: General Magistrate

Telephone Number: 941-861-4866 Attorney No.: 0164089

Gender (check one):  Male  Female

Ethnic Origin (check one):  White, non Hispanic

Hispanic

Black

American Indian/Alaskan Native

Asian/Pacific Islander

County of Residence: Pinellas

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE  
FAIR CREDIT REPORTING ACT (FCRA)

The Florida Department of Law Enforcement (FDLE) may obtain one or more consumer reports, including but not limited to credit reports, about you, for employment purposes as defined by the Fair Credit Reporting Act, including for determinations related to initial employment, reassignment, promotion, or other employment-related actions.

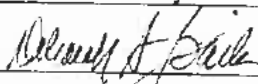
CONSUMER'S AUTHORIZATION FOR FDLE  
TO OBTAIN CONSUMER REPORT(S)

I have read and understand the above Disclosure. I authorize the Florida Department of Law Enforcement (FDLE) to obtain one or more consumer reports on me, for employment purposes, as described in the above Disclosure.

Printed Name of  
Applicant:

Deborah A. Bailey

Signature of Applicant:



Date: May 2, 2013

Deborah Bailey/Application for Nomination to the Twelfth Judicial Circuit/Continuation Page

**EDUCATION:**

**18a. (continued)**

<i>School</i>	<i>Class Standing</i>	<i>Dates of Attendance</i>	<i>Degree</i>
University of Dayton School of Law	10/153	8/90 – 5/93	J.D.

**NON-LEGAL EMPLOYMENT**

**19. (continued)**

<i>Date</i>	<i>Position</i>	<i>Employer</i>	<i>Address</i>
4/88 – 8/90	Needlecrafter/ Owner	In Stitches	703 Seventh Ave. Asbury Park, NJ
10/89 – 8/90	Paralegal	Gross & Hanlon	West Main St. Freehold, NJ
4/98 – 5/98	Clerk	Fidelity National Title Insurance Company	West Cypress Street, Tampa, FL

**PROFESSIONAL ADMISSIONS:**

**20. (continued)**

<i>Court or Administrative Body</i>	<i>Date of Admission</i>
Southern District of Ohio (federal)	June 7, 1994
State of Florida	April 23, 1999

**LAW PRACTICE:**

**21. (continued)**

<i>Position</i>	<i>Name of Firm</i>	<i>Address</i>	<i>Date</i>
Staff Attorney	Twelfth Judicial Circuit	1051 Manatee Ave. W. Bradenton, FL	3/00 – 2/05
General Magistrate	Twelfth Judicial Circuit	P.O. Box 48927 Sarasota, FL 34230	2/05 – present





IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
IN AND FOR SARASOTA COUNTY, FLORIDA

**BRANCH BANKING AND TRUST  
COMPANY, a North Carolina  
banking corporation,**

Plaintiff,

vs.

CASE NO. 2010 CA 012762 NC

**SUNNY ENTERPRISES OF FLORIDA,  
LLC, a Florida limited liability company;  
KALAVATIBEN M. PATEL, an individual;  
and MAGANBHAI U. PATEL, an individual,**

Defendants.

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**RECOMMENDED ORDER OF MAGISTRATE**

This cause came on for hearing before Magistrate Deborah A. Bailey, on February 14, 2011 and March 16, 2011, on the **Plaintiff's Verified Motion for Appointment of a Receiver and to Issue Receiver's Certificates**. The Magistrate has jurisdiction pursuant to Rule 1.490 of the Florida Rules of Civil Procedure. Being fully advised in the premises, the Magistrate reports as follows:

1. The instant action is one for mortgage foreclosure, which was filed on or about December 27, 2010. The Complaint is stated in six counts, to wit: Counts I through III seek foreclosure of Note and Mortgage No. 1 and enforcement of two personal guaranties; Counts IV through VI seek foreclosure of Note and Mortgage No. 2 and enforcement of two personal guaranties. Initially, the Plaintiff's Verified Motion for Appointment of a Receiver ("Verified Motion") came before the Magistrate on February 14, 2011. After hearing oral argument on the Verified Motion, the Magistrate directed the parties to set an evidentiary hearing on the need for a receiver.

2. The matter came on for evidentiary hearing on March 16, 2011. At that time, the Magistrate heard the testimony of the following persons: Jonathan Taylor, Special Assets Loan Officer for Branch Banking and Trust Company; Stephen Travis Zawacki, Process Server; Edward C. Denton, Vice President of Afton Hospitality Management; Bharat Patel, General Manager of the Quality Inn Airport of Sarasota (a/k/a Quality Inn and Suites) (hereinafter "Quality Inn") and Member of Sunny Enterprises, LLC; Manisha Patel, employee of the Quality Inn and wife of Bharat Patel; Kalavatiben M. Patel, Managing Member of Sunny Enterprises, LLC; and Robert L. Miller, Certified Public

Accountant for Sunny Enterprises, LLC. In addition, the parties introduced several exhibits into evidence, which are reflected on the Clerk's Evidence Records.

3. In addition to the testimony and exhibits received on March 16, 2011, the Magistrate has also reviewed the following documents:

- Plaintiff's Verified Motion
- Affidavit of Jonathan Taylor in Support of Plaintiff's Verified Motion
- Supplemental Affidavit of Jonathan Taylor in Support of Plaintiff's Verified Motion
- Affidavit of David G. Pope in Support of Plaintiff's Verified Motion
- Resume/CV of Gilles Arditi, CHA (Plaintiff's Proposed Receiver)
- Defendants' Memorandum of Law in Opposition to Plaintiff's Verified Motion
- Affidavit of Kalavatiben M. Patel in Opposition to Appointment of Receiver (with attachments)
- Affidavit of Maganbhai U. Patel in Opposition to Appointment of Receiver (with attachments)
- Affidavit of Bharat Patel in Opposition to Appointment of Receiver (with attachments)
- Supplemental Affidavit of Bharat Patel in Opposition to Appointment of Receiver (Insurance Coverage Issues) (with attachments)
- Defendants' Motion for Evidentiary Hearing on Plaintiff's Motion for Appointment of Receiver
- Defendants' Motion to Deposit Funds Into the Registry of the Court
- Plaintiff's Response to Defendants' Motion to Deposit Funds into the Registry of the Court

4. Plaintiff requests the appointment of a receiver in this action, due to the acknowledged and undisputed default of the Defendants on two Notes, which were executed pursuant to two Loan Agreements with Branch Banking and Trust Company ("Lender"). (Plaintiff's Exhibits 1, 12) The Note for Loan No. 1 was in the original principal amount of 1,692,769.00. (Plaintiff's Exhibit 2) The Note for Loan No. 2 was in the original principal amount of \$1,184,939.00. (Plaintiff's Exhibit 13) Each Note is secured by the following documents: (a) a Mortgage, Assignment of Leases and Rents, and Security Agreement; (b) a Security Agreement; (c) an Absolute Assignment of Lessor's Interest in Leases and Rents; (d) a UCC Financing Statement, filed in the Official Records of Sarasota County; (e) a UCC Financing Statement, filed in the Florida Secured Transaction Registry; (f) an Unconditional Guaranty of Payment and Performance, signed by Kalavatiben M. Patel; and (g) an Unconditional Guaranty of Payment and Performance, signed by Maganbhai U. Patel. (Plaintiff's Exhibits 3-9 and 14-20)

5. Lender's representative, Jonathan Taylor, testified that the Defendants are in default under the terms of the Loan Agreements, Notes, Mortgages, and associated documents. According to Taylor, Sunny Enterprises failed to make regular mortgage payments due under both loans beginning in June 2010. Taylor testified that he

attempted to work with Sunny Enterprises, but was unsuccessful. On or about September 30, 2010, Sunny Enterprises forwarded a check to Lender in the amount of \$30,000.00. Bharat Patel characterized this payment as an attempt to show good faith, based on a promise from Jonathan Taylor to try and work out some sort of modification. On or about October 28, 2010, Lender sent a Default Letter to Sunny Enterprises giving notice and an opportunity to cure the existing defaults. (Plaintiff's Exhibit 10) When that did not occur, Lender sent an Acceleration Letter with regard to each Note on or about November 29, 2010. (Plaintiff's Exhibits 11, 21) When the defaults were not cured, Lender filed the instant action.

6. There is no dispute between the parties that the appointment of a receiver rests within the sound discretion of the trial court, but that the exercise of that discretion is subject to certain guidelines. See e.g., *Carolina Portland Cement Co. v. Baumgartner*, 128 So. 241 (Fla. 1930); *BJ Colley v. First Federal Savings & Loan Ass'n of Panama City*, 516 So. 2d 344 (Fla. 1<sup>st</sup> DCA 1987); *Edenfield v. Crisp*, 186 So. 2d 545 (Fla. 2d DCA 1966). "In deciding whether to enforce a mortgage provision for the appointment of a receiver, the trial court must balance the mortgagor's right to own and possess its property against the interests of the mortgagee in protecting its security in the property." *Seasons Partnership I v. Kraus-Anderson, Inc.*, 700 So. 2d 60, 61 (Fla. 2d DCA 1997); *ANJ Future Inv., Inc. v. Alter*, 756 So. 2d 153 (Fla. 3d DCA 2000).

7. Recognizing the effect of the above-stated law, the Defendants argue that the Lender has failed to demonstrate its entitlement to the appointment of a receiver under *Warrington v. First Valley Bank*, 531 So. 2d 986 (Fla. 4<sup>th</sup> DCA 1987). The basis of the holding in *Warrington* was a standing question.<sup>1</sup> In discussing the lack of standing, the appellate court addressed the "rules controlling the appointment of a receiver ...." *Id.* at 987 (citing to *Apalachicola Northern Railroad v. Sommers*, 85 So. 361, 362 (Fla. 1920)). The "rules" referred to in *Warrington* are actually rules for the exercise of a trial court's discretion in appointing a receiver, rather than the general standard for appointment of a receiver. See *Apalachicola Northern Railroad*, 85 So. at 362. The general standard for appointment of a receiver requires the movant to show: (1) either "a clear legal right in himself to the property in controversy, or that he has some lien upon or property right in it"; and (2) that "appointment is necessary, either to prevent fraud or to save the property from injury or threatened loss or destruction, which facts must be established to the satisfaction of the court." *Id.*

8. Sunny Enterprises argues against the appointment of a receiver noting that it is in compliance with all of the requirements of the franchise agreement<sup>2</sup> under the "Choice" hotel brand, and contending that Smith Travel Reports indicate the hotel is performing in an efficient manner as compared to its competitive set (other area hotels of

<sup>1</sup> The actual holding in *Warrington* was that a judgment creditor of an ex-stockholder lacked standing to request appointment of a receiver for a corporation while the judgment creditor attempted to have a transfer of stock from the ex-stockholder to his family declared a fraudulent conveyance. *Id.* at 987.

<sup>2</sup> Defendants claim they are paid up-to-date on their franchise fees, they recently received a favorable quality assurance review by Choice, and appointment of a receiver could lead to a default under their franchise agreement.

similar size and service level). Sunny Enterprises further contends that no waste is occurring at the property because it is allocating all net receivables towards salaries, operating expenses and other essential hotel functions, while Sunny's principals (M. Patel and K. Patel) and Bharat Patel, the general manager, are only taking "minimal owner benefits" from the business. Manisha Patel, Bharat's wife, receives a salary of \$500.00 every two weeks, as she is not an owner or manager with Sunny Enterprises. Further, Sunny Enterprises maintains that a receiver cannot operate the property any more efficiently than it is presently operating the property because a receiver would have to hire and pay personnel to perform the functions presently being performed by Patel family members for little or no pay. Accordingly, Sunny Enterprises and the Patels request the Court deny appointment of a receiver and instead consider requiring them to pay funds into the registry of the Court.

### Findings

9. After review of the documents set forth in ¶ 3 above, and after consideration of the testimony and exhibits introduced at the hearing, the Magistrate makes the following findings.

- Sunny Enterprises, LLC, Kalavatiben M. Patel, and Maganbhai U. Patel are in default regarding their obligations under the documents associated with Loan No. 1 (Plaintiff's Exhibits 1 through 9) and Loan No. 2 (Plaintiff's Exhibits 12 through 21).
- As of March 15, 2011, the amounts due and owing under Note 1 were: Principal balance of \$1,385,919.69, plus interest in the amount of \$31,064.36.
- As of March 15, 2011, the amounts due and owing under Note 2 were: Principal balance of \$1,038,318.39, plus interest in the amount of \$40,895.64.
- In addition to the amounts due and owing under Notes 1 and 2, the real estate taxes owed to Sarasota County for 2009 remain unpaid at present, and the real estate taxes for 2010 are due and owing.
- Apart from one "good faith" payment in the amount of \$30,000.00 dated September 30, 2010, Sunny Enterprises, LLC, has made no regular monthly mortgage payments from June 2010 until the present.
- The Quality Inn is operated pursuant to a franchise agreement under the Choice Hotels "brand."
- With the exception of some e-mails from Bharat and/or Manisha Patel to the Lender in late September 2010, Sunny Enterprises, LLC, failed to provide Lender with any information on the Quality Inn's operations (*i.e.*, financials, franchise inspections, STR reports, etc.) from September 2010 until February 9, 2011, which is just before the initial hearing on Plaintiff's Verified Motion. (Defendants' Exhibit 2)
- Defendants have provided no financial information for hotel operations during December 2010, January 2011, and February 2011.
- The Quality Inn is presently being run by the Patel family with the assistance of three desk clerks and three housekeepers.

- The Quality Inn passed its last Quality Assurance check by Choice Hotels on or about December 15, 2010 (Defendants' Exhibit 1)
- The inspection conducted by Afton Hospitality Management on or about March 1, 2011, reveals that the Quality Inn is in "average" condition for its age and exhibits "adequate" room cleanliness. The inspection also noted overgrown landscaping, dilapidated fencing running along the sides of the property, poor cleanliness, chipping sidewalk paint, cobwebs, dirt and grime accumulation on exterior surfaces, disconnected and missing security cameras, and several non-functioning exterior lights. The report also notes that only 25% of the 81 guest rooms have replacement bedding packages, with 75% being in need of replacement. Additionally, the report indicates that Choice Hotels will require updates this year in the form of flat panel televisions in guest rooms, which may necessitate modifications to the credenzas, as well as improvements in the breakfast area of the hotel.
- The Afton report analyzed STR data. The report concludes that the hotel's RevPAR is "reasonably consistent with the market" but over the past three years, it has "steadily declined each year more than the competitive set."
- The principals of Sunny Enterprises (M. Patel and K. Patel) have injected capital contributions into the business during the years 2007 through 2010 to maintain hotel operations. (Defendants' Exhibit 4) According to Exhibit 4, distributions have exceeded contributions during that period.
- According to the Sunny Enterprises General Ledger (Plaintiff's Exhibit 34), the Patels withdrew \$134,871 in owner benefits from the business during calendar year 2010. Of this total, over \$58,350 was withdrawn from the period of July 1, 2010 through December 31, 2010 when Sunny Enterprises was not making its monthly mortgage payments to Lender.
- In addition, the testimony revealed that K. Patel, M. Patel, Bharat Patel, and Manisha Patel have access to business credit cards (Amex SkyMiles and CitiBusiness). The amounts charged on those credit cards in 2010 was in excess of \$131,000, these cards are not paid in full and carry ongoing balances with attendant finance charges from month to month, and Sunny Enterprises' accountant, Robert L. Miller, could not state whether the charges on these cards were related solely to business expenses.
- According to Bharat Patel's testimony, the Patels have been unsuccessful to date in attempting to attract other investors for Sunny Enterprises, LLC.
- Although Bharat Patel testified on direct examination as to the balances in the three bank accounts maintained with Lender as of March 15, 2011, on cross examination he admitted that late in the afternoon of March 15, 2011, Maganbhai U. Patel withdrew \$60,000 from these accounts. The withdrawal was taken in the form of two cashier's checks, one drawn to the order of Manisha Patel in the amount of \$30,000. The second check was drawn to a Jinges Patel, a gentleman purportedly having no familial relationship to the Patels who run the Quality Inn, but who is reportedly acting as a "consultant" to the Patels.

## Conclusions

10. Based on the above factual findings and upon consideration of the applicable law, the Magistrate draws the following conclusions.

- There is a strong likelihood that Lender will prevail on the merits of this action, given the acknowledged and undisputed defaults under the Loan Documents.
- Under the Loan Documents, Lender has a lien upon all real and personal property, including the income stream being generated by the Quality Inn.
- Section 20 of each Mortgage, Assignment of Leases and Rents, and Security Agreement is a provision for appointment of a receiver upon the “filing of a complaint to foreclose this Mortgage or at any time thereafter ....”
- As per the Stipulation of the parties, the current fair market value of the hotel property “is materially and substantially less than the current, outstanding amount owing to Plaintiff pursuant to such promissory notes.” (Plaintiff’s Exhibit No. 22)
- If rents and profits are pledged as additional security by the mortgagor, the failure to use those rents and profits to pay the mortgage may result in the appointment of a receiver unless the mortgagor can show that the property secured by the mortgage will sell for enough to pay the debt and the charges owed to the mortgagee and thus affords ample and adequate security. *See KeyBank National Ass’n v. Knuth Ltd.*, 15 So. 3d 939, 940-941 (Fla. 3d DCA 2009) (citing *Baumgartner*).
- Sunny Enterprises has failed to use the rents and profits (*i.e.*, the income stream from the hotel) to pay the mortgage and, by its Stipulation, it is clear that the current fair market value of the hotel is “materially and substantially less” than the current amounts owing to the Lender.
- Sunny Enterprises’ reliance on the *Seasons Partnership* and *Alafaya Square* cases is misplaced. The critical facts in each case are distinct from the facts in the instant case. In *Seasons Partnership*, the mortgagor was applying all of its net rental income to the mortgage debt, even though those payments did not satisfy the entire mortgage obligation, and there was no evidence of any waste. *See Seasons Partnership*, 700 So. 2d at 61-62. In *Alafaya Square*, the rents were being sequestered under a prior court order; therefore, the mortgagor had no control over incoming rents from shopping center tenants and could not have refused to apply the rents to the mortgage balance. *See Alafaya Square Ass’n, Ltd. v. Great Western Bank*, 700 So. 2d 38, 40-41 (Fla. 5<sup>th</sup> DCA 1997).
- In the instant action, Sunny Enterprises is not applying any of its net income to the mortgage debt, although it is continuing to allow its owners to take benefits, none of the hotel income stream has previously been sequestered by the Court, and the record indicates deterioration in the overall condition of the hotel property, as well as an overall decline in business.

11. Finally, the Magistrate is constrained to address the Defendants’ Motion to Deposit Funds into the Registry of the Court, filed on March 17, 2011, the day after the evidentiary hearing, and the Plaintiff’s response to that Motion. Perhaps recognizing the improvident actions of Maganbhai U. Patel in withdrawing \$60,000 from Sunny

Enterprises' bank accounts with Lender on the afternoon prior to the evidentiary hearing. Defendants now request that they be permitted to deposit those funds into the Court registry and allow the Court to "administer the disbursement of those funds for use by the Defendants for hotel operations, inclusive of payment of trade expenses, employees, taxes and reserve fund for improvements to the property, to keep all franchise fees current as well as to reimburse the principals of the Defendant ... with compensation for their full time work efforts ...."

12. Not surprisingly, Lender contends that Bharat Patel's knowing misrepresentation of the status of the Sunny Enterprises' bank accounts during his direct testimony, and then his problematic testimony as to what those funds were intended for when confronted with the Lender's knowledge of the withdrawals, leads to only one conclusion: Defendants took the funds to make sure they went to the benefit of the Patels. Lender contends that the Defendants should be required to deposit the funds back to the accounts from which they were wrongfully removed, or the funds should be deposited into the account of the receiver when appointed.

13. Based upon the above analysis, the Magistrate ultimately concludes that both the facts and the law weigh in favor of the appointment of a receiver. Accordingly, the Magistrate recommends the Court grant the Plaintiff's Verified Motion and appoint a receiver to operate and manage the hotel property during the pendency of this foreclosure case. The Magistrate has reviewed the Order Appointing Receiver submitted by the Lender (attached to Lender's Response to Defendants' Motion) and recommends the Court enter same.

14. Further, the Magistrate recommends the Court deny the Defendants' Motion to Deposit Funds into the Registry of the Court. The Magistrate further recommends that the Court direct Defendants to re-deposit the \$60,000 into the Sunny Enterprises LLC operating account with Lender immediately upon service of this Recommended Order.

Based upon the above-stated findings, the Magistrate submits the following Recommended Order for approval by the Court:

#### Recommended Order

1. Plaintiff's Motion for Appointment of a Receiver is **GRANTED**.
2. Defendants' Motion to Deposit Funds into the Registry of the Court is **DENIED**.
3. Defendants shall re-deposit the \$60,000 into the Sunny Enterprises LLC operating account with Lender immediately upon service of this Recommended Order.
4. Pending the Court's adoption of this Recommended Order and appointment of the receiver, the Defendants shall not be permitted to withdraw any other funds in the form of "owner benefits" for their personal use.

5. Upon adoption of this Recommended Order, the Court shall enter the Order Appointing Receiver provided by the Plaintiff with its Response to Defendants' Motion to Deposit Funds into Registry of the Court.

Please take notice that pursuant to Rule 1.490(h), the parties to this cause have ten (10) days from the date of service of this Recommended Order to serve exceptions to its contents. The party filing exceptions is required to send copies of the exceptions directly to the Judge assigned to this case, as well as to the undersigned Magistrate. The party filing exceptions will be required to provide the Court with a record sufficient to support their exceptions or the exceptions will be denied. A record ordinarily includes a written transcript of all relevant proceedings. The party filing the exceptions must have the transcript prepared for the court's review. If exceptions are timely filed, they shall be heard on reasonable notice by either party or the court. If no exceptions are filed within ten (10) days from the date of service, the Court shall take appropriate action on the report.

BY: \_\_\_\_\_  
Deborah A. Bailey, Magistrate  
Twelfth Judicial Circuit

cc: Andrew M. Brumby, Esq.  
Shutts & Bowen LLP  
300 South Orange Avenue, Suite 1000  
Orlando, FL 32801

Kevin F. Jursinski, Esq.  
Kevin F. Jursinski, P.A.  
7800 University Pointe Drive  
Suite 200  
Fort Myers, FL 33907

Sent to Clerk for filing on \_\_\_\_\_

Faxed and Mailed to parties on \_\_\_\_\_