

Ex. E

Subject: RE: the return of MidCountry's records to the court
From: "John Pucci"
Date: Tue, 15 Dec 2009 16:57:16 -0500
To: "Bob"
CC: "Gregory Simpson"

Dear Mr. Pickle:

In response to your letter of December 15, 2009, please recall that Judge Saylor ordered that the MidCountry Bank records be returned to us. See Electronic Clerk's Notes of hearing on 10/30/2008 ("Records in possession of Mag. Judge will be returned."). You did not obtain a stay of the October 30 order. Therefore, Judge Hillman obeyed it and delivered the records to counsel for 3ABN where they will remain unless and until we are ordered to do something else with them.

You have moved to have the records sent to the 1st Circuit Court of Appeals as part of the district court record. We will oppose your motion by filing an opposition memorandum. It is not appropriate to debate the legal issues raised by your motion informally because they will clearly need to be addressed in an orderly fashion by Judge Saylor and potentially reviewed by the First Circuit Court of Appeals.

In the meantime, you may be assured that the MidCountry records are in the custody of counsel for 3ABN, are in the same condition that they were in when Judge Hillman gave them to us, and will be maintained in that condition at least until the case is over and all rights of appeal are exhausted. Please consider this response as written assurance that the MidCountry Bank records will be preserved to that extent.

From: Bob [mailto:bob@]
Sent: Tuesday, December 15, 2009 1:29 PM
To: John Pucci
Cc: G. Arthur Joy; Gerald Duffy; Jerrie Hayes; Kristin L. Kingsbury; William Christopher Penwell; Lizette Richards; Greg Simpson
Subject: re: the return of MidCountry's records to the court

Counselor Pucci:

I just spoke with a clerk of court at the federal courthouse in Worcester, Massachusetts. She informed me that the court does not have a copy of the bank statements that MidCountry Bank produced in response to our subpoena, and that the receipt docketed as Doc. 160 in our case shows who those bank statements were given to.

That receipt, dated December 16, 2008, is signed as follows:

Christine Parizo
Fierst, Pucci & Kane LLP
64 Gothic St. Northampton MA 01060
(413) 584-8067

Thus, you received the only copy of MidCountry's records that the court had. Would you stipulate to the return of MidCountry's records to the court, accompanied by your certification that the returned records do not differ in quantity or content from that which you received?

If you do not so stipulate, we shall prepare a motion seeking an order commanding you to return MidCountry's records to the court. (Such return would need to be accompanied by the same certification.) This letter would then be, pursuant to L.R. 7.1(a)(2), Defendants' good faith attempt to narrow or resolve the issue before bringing such a motion. If you refuse to stipulate, would you oppose such a motion?

I would remind you that the district court is without authority to eliminate material from the record on appeal. 20 *Moore's Federal Practice* §310.40[2]; *Belt v. Holton*, 197 F.2d 579, 591 (D.C. Cir. 1952). Therefore, the bank statements must be returned.

Sincerely,

Bob Pickle, *pro se*