

Reply and state as follows:

BACKGROUND

1. On March 29, 2007, the Department filed a Motion for Summary Judgment against Defendants Barry and Roxanne Pollard and Brief in Support.
2. On May 15, 2007, the Pollards filed their Response to the Motion for Summary Judgment.
3. The hearing on the Motion for Summary Judgment was initially scheduled to be heard May 29, 2007.
4. The Department then struck the scheduled hearing on the Motion for Summary Judgment so that it could conduct additional discovery.
5. At a later time, the Department rescheduled the Motion for Summary Judgment for August 30, 2007.
6. Then, at the Department's suggestion, it again continued the hearing on its Motion to September 27, 2007.
7. On September 20, 2007, the Department filed a fifteen page Reply to the Pollards' Response to the Department's Motion for Summary Judgment. Attached to this Reply are eleven (11) new exhibits which consist of over seventy (70) pages of new material to support its original Motion, which consisted of only nine (9) pages in length plus exhibits.
8. Counsel for the Pollards did not receive the Department's fifteen page Reply in adequate time before the hearing on the Department's Motion for Summary Judgment to examine or address the information.
9. Counsel for the Pollards requested that the Department accommodate

their request to continue the hearing to give the Pollards a reasonable opportunity to review and address the arguments posed in the Reply as well as to examine the newly attached evidence. The Department has denied the Pollards' request.

ARGUMENT

A. THE DEPARTMENT'S REPLY SHOULD BE STRICKEN

Local District Court Rule 37(B) for the Seventh Judicial District provides that reply briefs shall not exceed five pages in length. Rule 37(D) further states that "[a]ny brief filed in violation of this rule **shall not be** considered by the assigned judge and **shall be stricken** from the record."

The Department's Reply is fifteen pages in length not including a cover page or signature page and is clearly in violation of the Local District Court Rule 37. Consistent with the local rules of the Seventh Judicial District, this Court must strike the Department's Reply.

B. ALTERNATIVE MOTION TO CONTINUE HEARING ON THE MOTION FOR SUMMARY JUDGMENT AND LEAVE TO FILE SUR-REPLY

The Department has had over four months in which to file its Reply. Nonetheless, the Reply was filed less than a week before the scheduled hearing. Furthermore, Counsel for the Pollards received the fifteen page Reply with over seventy pages in new exhibits just three days before the scheduled hearing on the Motion for Summary Judgment.

In the event the Court is going to consider the reply that was filed in violation of the Local Court Rules, the Pollards ought to be given a reasonable

opportunity to examine the information contained in the exhibits which are new evidentiary materials that the Pollards have not been given an opportunity to dispute. The newly attached evidence and arguments in the Department's Reply raise issues not previously set forth in the Department's Motion for Summary Judgment. Although the Department will argue that it is merely replying to the arguments set forth by the Pollards' Response, there are supporting materials that have never before been seen by the Pollards.

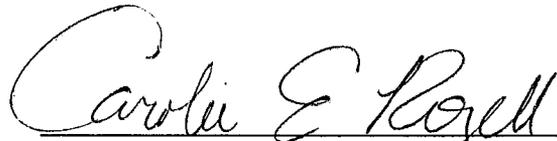
For instance, the Department relies on a supplemental affidavit by Dan Clarke with attachments that appear to be reports generated for the Department's benefit. The Pollards have never seen the attached reports. The Department's Reply claims that these reports are the detail behind the summary accounting attached to the Department's original Motion. The summary accounting claims that forty-one transactions from 2000-2004 resulted in monies that the Pollards' allegedly received from Marsha Schubert's Ponzi Scheme. The Pollards disputed the summary accounting attached to the Department's Motion. The Department is now relying upon additional more detailed reports that allegedly back up the summary accounting attached to the original Motion.

This case is based on an equitable accounting of monies entrusted to Marsha Schubert as an AXA/Equitable representative, agent, and employee. The Pollards are entitled to certain offsets and credits. Each financial transaction during an eleven year period, and not just between the years of 2000-2004, requires a detail oriented accounting.

It is impractical for the Pollards to sort through the Department's newly attached financial reports and responsive arguments only three days prior to a hearing on the Department's Motion for Summary Judgment. It is necessary that the Pollards have adequate opportunity to review the Department's accounting and to conduct discovery including deposing the Department's investigators who prepared the reports. Furthermore, it is necessary that the Pollards be given an opportunity to file a sur-reply addressing the arguments and evidence relied upon by the Department in its Reply.

WHEREFORE the Pollards request this Court strike the Department's Reply for failure to comply with Local District Rule 37, or in the alternative to order the Department to amend the Reply to comply with Rule 37. In addition, the Pollards request that the Court continue the hearing currently scheduled for September 27, 2007 for six (6) weeks, and further grant the Pollards leave to file a sur-reply to the Department's Reply.

Respectfully submitted,



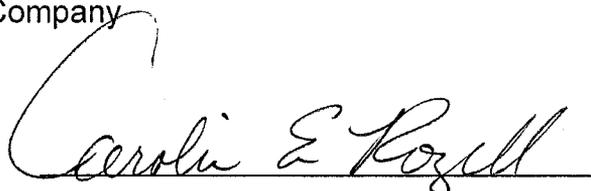
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing pleading was hand deposited in the United States Mail, postage fully prepaid, on the 26th day of September, 2007, to:

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