

**IN THE UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
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IN RE:)	
)	Chapter 7
ULRICH FELIX ANTON ENGLER;)	CASE NO. 9:08-bk-04360-MGW
)	
PRIVATE COMMERCIAL OFFICE, INC.;)	
and PCO CLIENT MANAGEMENT, INC.)	
)	
Debtor.)	
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**ORDER GRANTING SUNTRUST BANK'S EMERGENCY MOTION FOR
RECONSIDERATION AND FOR RELIEF FROM THE SANCTIONS ORDER
ENTERED AGAINST SUNTRUST BANK**

THIS CASE came on for hearing on July 7, 2011 at 10:00 a.m. on SunTrust Bank's ("SunTrust") Emergency Motion for Reconsideration and for Relief from the Sanctions Order Entered Against SunTrust Bank (the "**Motion**") [D.E. 670]. The Court has considered the Motion, the Trustee's Response to SunTrust Bank's Emergency Motion for Reconsideration and for Relief from Sanctions Order (the "**Response**") [D.E. 682], the arguments and representations of counsel, and is otherwise fully informed in the premises. Accordingly, it is

ORDERED and ADJUDGED as follows:

1. The Motion is **GRANTED**.
2. The Court's Sanctions Order [D.E. 658] is **VACATED**.
3. SunTrust Bank will provide the Trustee with a cost estimate for the production of the following categories of documents on or before Friday, July 22, 2011:
 - SunTrust's policies and procedures pertaining to wire transfers;

- SunTrust's terms and conditions for the subpoenaed accounts;
- Documents sufficient to determine the fees, commissions, or benefits SunTrust derived from the subpoenaed accounts;
- Documents sufficient to determine the fees, commissions, payments, or benefits received by any SunTrust employee having responsibility for the subpoenaed accounts;
- All weekly balance fluctuation reports;
- All Monetary Instrument Logs;
- Documents related to the source of funds for the subpoenaed accounts;
- All wire advices associated with incoming wires;
- All correspondence, including e-mails, that relate to the subpoenaed accounts;
- All weekly ACH transaction activity reports;
- All funds flow reports;
- Verification of assets or income and tax returns for the principals of the subpoenaed accounts;
- Reports of International Transportation of Currency or Monetary Instruments;
- Reports of Foreign Bank and Financial Accounts;
- Form 8300s;
- Transaction Monitoring Reports;
- IRS Form 4789 Currency Transaction Reports;
- US Custom Form 47900 Reports of International Transportation of Currency of Monetary Instruments;
- Designation of Exempt Person Forms;

- Check kiting reports; and
- Insufficient Fund Reports or Overdraft Reports.

4. Subject to any applicable privilege and corresponding privilege log entry, and provided these documents do not reveal the existence of a Suspicious Activity Report (“SAR”), SunTrust Bank will produce any of the documents identified in Paragraph 3, to the extent they exist, subject to payment by the Trustee of SunTrust’s reasonable costs within two weeks of any such payment.

5. The Court retains jurisdiction over this matter to the extent that there is a dispute over whether SunTrust’s costs to produce any documents required by this Order are reasonable.

6. SunTrust is further required to produce any internal investigation reports that are typically prepared by the bank in the ordinary course of business and are not solely related to any investigation or action performed by SunTrust to comply with its requirements to file a SAR. The Court adopts the reasoning in *Regions Bank v. Allen*, 33 So. 3d 72 (Fla. 5th DCA 2010), in determining what documents SunTrust must produce with respect to its investigation of the subpoenaed accounts. Specifically:

transactional and account documents such as wire transfers, statements, checks, and deposit slips are the types of documents generated in the ordinary course of business that are subject to discovery. (internal citations omitted) Such documents would be prepared regardless of whether a financial institution has an obligation to report suspicious activity to the federal government.

By contrast, a draft SAR or internal memorandum prepared as part of a financial institution's process for complying with federal reporting requirements is generated for the specific purpose of fulfilling the institution's reporting obligation. These types of documents fall within the

scope of the SAR privilege because they may reveal the contents of a SAR and disclose whether “a SAR has been prepared or filed.” (12 C.F.R. § 21.11(k) 2005.) Unlike transactional documents, which are evidence of suspicious conduct, draft SAR's and other internal memoranda or forms that are part of the process of filing SAR's are created to report suspicious conduct.

Id at 76-77.

7. SunTrust is not required to produce a draft SAR or internal memorandum prepared as part of a financial institution's process for complying with federal reporting requirements or any other document that would disclose the existence of a SAR or whether a SAR has been filed.

8. Outside Counsel for SunTrust is required to review all documents responsive to the Subpoena and certify to the Court that the SAR privilege has been appropriately applied and that no documents or communications generated as part of SunTrust's ordinary practice of investigating suspicious activity have been inappropriately withheld from production. That certification to the Court is required on or before Friday, July 29, 2011. All investigatory documents not subject to the SAR privilege or other privilege will be produced after receipt of payment by SunTrust.

9. SunTrust will provide the Trustee with a privilege log for any responsive document withheld from production on the basis of any privilege, other than the SAR privilege. The privilege log will be provided to the Trustee on or before Friday, July 29, 2011. Any documents withheld based on the prohibitions found in the Annunzio-Wylie Anti-Money Laundering Act shall not be listed on the privilege log as such a disclosure would tend to establish the existence or non-existence of a SAR in violation of federal

statutes. Instead, the certification made by the Outside Counsel for SunTrust, as identified in paragraph 8 above, will be sufficient.

10. The Court reserves jurisdiction to conduct an *in camera* review of any document withheld from production by SunTrust.

DONE AND ORDERED in Chambers in Tampa, Florida, on July 22, 2011.



Honorable Michael G. Williamson
United States District Court

Copies to be provided by CM/ECF service
and to all parties on the attached Service List