# EXHIBIT 102

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

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|---|---|---|
| BLUE FLAME MEDICAL, LLC, | ) | |
| | ) | |
| Plaintiff, | ) | Civil Action No. |
| | ) | |
| vs. | ) | 1:20-cv-00658 |
| | ) | |
| CHAIN BRIDGE BANK, N.A., | ) | (LMB/IDD) |
| JOHN J. BROUGH, and DAVID | ) | |
| M. EVINGER, | ) | |
| | ) | |
| Defendant. | ) | |
| ______________________________ | ) | |
| CHAIN BRIDGE BANK, N.A., | ) | |
| | ) | |
| Third-Party Plaintiff, | ) | |
| | ) | |
| vs. | ) | |
| | ) | |
| JPMORGAN CHASE BANK, N.A., | ) | |
| | ) | |
| Third-Party Defendant. | ) | |

REMOTE VIDEOCONFERENCE
VIDEO-RECORDED DEPOSITION OF DAVID EVINGER
Friday, January 29, 2021, 9:32 a.m.
Oak Hill, Virginia

Reported By: Marjorie Peters, FAPR, RMR, CRR, RSA
Job Number: 4398572

provided our team in that area.

Q. So from your perspective, a deposit of that size would not have been any problem for the bank's capital ratios; is that accurate?

A. Are you referring to the March time frame -- end of March time frame? We would -- and as I talked to you about, it wouldn't have had -- if put into a zero risk-weighted asset, it would not have any negative impact on our risk-based capital ratios, and it would have had a slight decline to our leverage ratio for the purposes of our March 31st call report.

Q. So from your perspective, there was no problem in terms of capital ratios with taking in this deposit; is that correct?

A. Just in and of itself, we were able to hold -- hold this money based on our capital levels at the time.

Q. Moving up the chain, there was an e-mail that Mr. Brough was copied on, which is the one that he forwarded to you. That's the one I'd like to look at now.

THE VIDEOGRAPHER: We're back on the record. The time is 4:05 p.m.

BY MR. WHITE:

Q. Mr. Evinger, hopefully, we have downloaded Plaintiff's Exhibit 66, so that you can look at it. It's a one-page e-mail.

(Plaintiff Exhibit 66, e-mail 3.26.2020, CBB00002686, was marked for identification.)

Q. Let me know when you have it.

A. I do have it.

Q. Mr. Gula here is sending you a link to the website for Blue Flame Medical; is that correct?

A. Yes.

Q. Is that the sort of information that you had requested that Mr. Gula provide on the 25th when you spoke to him?

A. My discussion with him was about -- about the contracts themselves, not about his website.

Q. Did you e-mail Mr. Gula back and ask for copies of the contracts?

A. I don't recall doing so, no.

Q. As a matter of fact, you at one point on the 26th informed your entire staff at Chain Bridge Bank not to contact Mr. Gula; is that correct?

A. We sent an e-mail to our team to stand down, essentially, to not contact him, so we could continue to do our due diligence.

Q. If your concern was the contracts, Mr. Evinger, why didn't someone contact Mr. Gula on the 26th to let him know that that was your concern?

A. I believe we were fairly clear with him on our need and in the follow-up e-mail of what we wanted.

So I didn't feel like there was a requirement to follow up with him. I think if you wanted to supply those, he knew that those were necessary for the bank, and that we were needing them.

Q. Are you saying that during your conversation with Mr. Gula on the 25th, you told him that the contracts were necessary in order to process this transaction; is that what you're saying?

A. What I'm saying is that we asked him for contracts to support this very large and unusual wire for a new business, and we needed those for support.

Q. When did you contact --

A. We didn't know --

Q. When did you contact Mr. Gula on the 26th?

A. I don't know that I spoke -- e-mailed him back on the 26th. I can't recall. I spoke to him in person on the 26th.

Q. After the money had been returned to California; correct?

MR. ORSECK: Object to form. Foundation.

Q. You can answer.

A. Mr. White, our conversation in person with Mr. Gula was prior to the funds being returned.

Q. When was your -- what time of day was your conversation with Mr. Gula?

A. Approximately 2:30 p.m.

Q. So the funds were still in Blue Flame

Medical's account at that point?
A. Funds had not been returned by the bank at that point.
Q. So they were still in Blue Flame Medical's account at that point; is that correct?
MR. ORSECK: Object to form.
A. Sorry, Mr. White. I'm going to go on to this version. Sorry. I apologize.
Can you repeat your question again?
Q. So the funds were still in Blue Flame Medical's account at 2:30 when you spoke with Mr. Gula; is that correct?
MR. ORSECK: Objection. Lack of foundation.
A. Again, the funds were still with -- with the bank at that point. We had not -- the wire process -- recall process had not been conducted.
Q. And specifically, the funds were in Blue Flame Medical's account at the bank; correct?
A. I believe their funds were soft-posted or memo-posted to their account.
Q. Which means they were in the account;

correct?

MR. ORSECK: Object to form.

A. Again, they were -- they were memo-posted to -- to the account. A hold placed during the investigation.

Q. It's a simple -- it's a simple question, Mr. Evinger.

Were the funds in Blue Flame's account?

MR. ORSECK: Objection. Asked and answered.

You should answer the question as you believe to be truthful and accurate.

A. As I stated, the funds were memo-posted to the Blue Flame account. A hold placed on it.

Q. Okay. So they were in the Blue Flame account; correct?

MR. ORSECK: Objection. Asked and answered.

Q. You're going to need to answer that question, or we're going to do it for the rest of the day.

MR. ORSECK: Objection.
Answer the question as you believe truthful and accurate, and ignore the haranguing.
A. I guess I'll repeat my understanding of how the wire was received. It was memo-posted into the client's account, with a hold placed on it while -- while we conducted our due diligence.
Q. Was the hold placed on it immediately at the -- when it was put into Blue Flame's account, the funds?
A. There was instructions provided to place a hold while we -- while we investigated what was going on.
Q. When was the time sequence between the hold and the money being posted in the account?
A. It would have been minutes afterwards. I don't know the exact time.
Q. So the money was put in the account, and then a hold was put on the money; is that correct?
MR. ORSECK: Objection. Foundation.
A. That's -- that's a process I just described.

Q. I just want to make sure I have the sequence correct.

The money was put into Blue Flame Medical's account, and then sometime shortly thereafter, a hold was put on the money. Is that the correct sequence?

MR. ORSECK: Object to form. Mischaracterizes the testimony.

A. Mr. White, the money was in -- was memo-posted to the client's account, and a hold was placed on it minutes after its arrival.

Q. So there was a period of time during which the money was in the account and not subject to a hold; is that correct?

MR. ORSECK: Same objection.

A. Mr. White, we -- the funds availability policy wouldn't have permitted us to provide -- provide those funds until the next business day, so whether there was or wasn't, the wire was memo-posted, and it wouldn't be available to the client until the next business day.

Q. By the way, on the funds available

policy, the bank has the capacity to make exceptions to that, doesn't it?

A. I think the bank can make exceptions to policies in a general statement, but with respect to funds availability policy, we -- for brand-new accounts, that's our -- that's our policy, so...

Q. The bank has made exceptions to that policy for long-term customers in the past; isn't that correct?

A. I don't know if we have or we haven't.

Q. You're not aware of a single instance where the bank has made an exception to the funds available policy that has a 24-hour hold on funds' availability; is that what you're saying?

MR. ORSECK: Objection to form.

A. I think, Mr. White, the policy is in place for a reason, so that accounts are used in a proper manner, and that moneys don't come in and out of an account in a manner that's inconsistent with laws and regulations.

Q. Mr. Evinger, is it your testimony that Chain Bridge Bank has never made an exception to

that policy? Is that what your testimony is?
A. That's not my testimony. I'm not saying we have never made an exception to it. I'm just saying that that's our policy, and we would implement that policy.
Q. And you have the authority to make an exception to it because it is your policy; correct?
A. It is our policy. We can -- but that's why we have it is to -- for this instance, for when there's new accounts, and there's activity -- unusual and large activity or unusual circumstances surrounding an account, but we haven't been able to conduct our proper due diligence. This all goes part and parcel with it.
Q. I'm sorry. You still haven't answered the question whether the bank has ever made an exception to that policy.
Can you just answer that question?
A. I -- I don't have an example for you, so I don't know.
Q. If you were so curious about the contracts, why did you tell your staff not to have

any contact or return calls from Mr. Gula on March 26th?

MR. ORSECK: Object to form.

A. At that stage, we wanted to make sure that information was conveyed through John or myself. We didn't want to have our staff to be put in -- put in a position where they weren't clear as to what was going on.

We had people who were working remotely from their homes. We had people who weren't informed of necessarily what was going on. It was moving very quickly and rapidly the night before.

So we told them to stand down temporarily while we tried to get the information we needed to clear this wire.

Q. Mr. Gula tried to get in touch with you repeatedly on March 26th, didn't he?

A. It's my understanding he was calling the bank a fair amount. He e-mailed me, I believe, that he was coming to the bank.

Q. Did you respond to any of those calls or e-mails?

A. I don't -- I don't recall responding to his e-mail or speaking to him on the telephone, no, but we did meet with him in person.

Q. Is it the bank's policy not to have communication with its customers when they have questions?

A. Mr. White, I don't think it's unreasonable for to us have an hour or two to do our proper review and conduct our due diligence. I don't think that's an inconvenience.

I think that's trying to get the right answer here. I think it's trying to make sure we follow laws and regulations in this case, and we don't allow for a new business with an unusually large-size transaction to conduct any transactions inappropriately.

So I do think we did the right thing. And I do think this space allowed us appropriate time to do that. We ultimately met with the client face-to-face.

Q. When you met with him face-to-face, did you tell him that you needed to see the contracts?

A. At that point, we informed him that the wire had been recalled by the State of California, and that he would really need to take that up with them. He understood.

Q. So from the morning of the 26th when he sent you the e-mail about the website until when you met with him and told him that the -- California had recalled the wire, did you return any of Mr. Gula's calls or messages to you and tell him that what you really needed to see was the contracts?

A. I don't recall speaking to him during that period of time either by telephone or e-mail.

Q. That's because you didn't speak with him; correct?

A. That I -- I don't recall speaking to him during that time.

Q. If your concern was really the contracts, why not call your loyal customer and let him know, look, we really need to see the contracts?

Why didn't you do that, if that was

I lost my train of thought. I know you're going to tell me I already know the question, but could you please repeat it again?

Q. You know what, I'm not. It is late in the day, and Mr. Orseck has a fair point. Let's move on from that.

During this conversation, did you offer to return the wire to California?

A. I don't recall it being on our first -- first call with California. I spoke to them. They seemed a little bit unsure, and they were going to -- they had outreach apparently from JPMorgan, so I think the two banks calling about the same transaction caused them some confusion.

They wanted to take some time and revisit, get back to us.

Q. Did you offer to return the wire?

A. In part of our discussion, we proposed that we could hold the money, or we could return the money. They did not want us to return the money at that stage.

They were continuing to conduct some

research on their end and work with their bank, JPMorgan, who had made outreach, apparently.

Q. Ms. Gonzales recalls that during that conversation, she asked whether the money -- the wire had been deposited into the Blue Flame Medical account.

Do you remember her asking about that?

A. There was a discussion about funds, and if they had -- they were in the account and had -- was all of the money still available or was money not there.

And so I think that she asked -- inquired about did we still have possession of the money, and she was comforted that we had the money and a hold on it while they and we determined if it was all in place properly.

Q. She calls you saying that the money had not been deposited into the Blue Flame Medical account. Is her recollection on that accurate?

A. Well, what I recall is we were discussing Chain Bridge Bank having possession of