

# Holland & Knight

COPY

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100094-WS

March 11, 2010

Via Hand-Delivery

Brian Armstrong  
Nabors Giblin & Nickerson, P.A.  
1500 Mahan Drive, Suite 200  
Tallahassee, FL 32308

RECEIVED-FPSC  
10 MAR 11 AM 11:52  
COMMISSION  
CLERK

Dear Mr. Armstrong:

Yesterday, I received a copy of your letter dated March 4, 2010 to Ann Cole, Clerk of the Florida Public Service Commission (the "Commission"). Our law firm represents Compass Bank (the "Bank"). Your letter fails to apprise the Commission of actual events, and contains a number of inaccuracies and distortions that we are compelled to correct.

First, your letter suggests that the Bank is not interested in selling the utility assets to your client – the Aquarina Community Services Association (the "Association"). That is absolutely false. If you would have reviewed the facts prior to sending your letter, you would have known that:

- The Bank's Vice-President, Mr. French Yarbrough, has been in repeated communications with members of the Association, and has advised those individuals of the Bank's foreclosure action against Service Management Systems, Inc., and the Bank's willingness to consider an offer from the Association to purchase the foreclosure judgment and/or the utility assets in which the Bank has an interest. To date, Mr. Yarbrough has received no such offer.
- My partner, Patrick Patangan, has also been in communications with representatives of the Association including its counsel in the foreclosure action, Edward Kimberg, and likewise has advised of the Bank's willingness to consider an offer from the Association to purchase the foreclosure judgment and/or the utility assets. To date, no such offer has been received.
- I too have been in repeated communications with representatives of the Association and the Office of Public Counsel ("OPC"), and have specifically advised those individuals of the Bank's foreclosure action, the timing of the foreclosure action, and the Bank's

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\* Representative Office

willingness to consider an offer from the Association to purchase the judgment and/or the utility assets. To date, I have received no such offer.

- After the Court entered a foreclosure judgment in favor of the Bank on February 23, 2010<sup>1</sup>, the Bank moved quickly to prepare a draft purchase and sale agreement for submission to all entities that had previously expressed an interest in acquiring the judgment and/or the utility assets. Had you taken the time to learn the facts before sending your letter to the Commission, you would have learned that the Bank provided the Association with a draft purchase and sale agreement on March 4, 2010, the same day it was provided to other potentially interested purchasers.

Second, your questioning of the "lawfulness" of the receiver that has been appointed by the Circuit Court to operate the utility system is irresponsible at best. To be clear, the Bank requested the Circuit Court in Brevard County to appoint a receiver in order to preserve the utility assets and to ensure that service to customers was not interrupted during the foreclosure action. I fail to grasp how you can now question the "lawfulness" of the court-appointed receiver when in fact your client – the Association – filed an extensive "Brief in Support of Compass Bank's Motion for Appointment of Receiver" in the foreclosure action. Notably, Exhibit "G" of your client's brief is the Affidavit of Paul Levesque who states that he is the President of Aquarina Community Services Association. For the record, not only did your client affirmatively support the appointment of a receiver and assist with the drafting of the receiver order, your client actually recommended the specific receiver who is currently in place and operating the utility system.

Finally, your characterization of the Bank's efforts to sell the judgment and/or the utility assets grossly distorts what has actually occurred. As explained above, the Bank is well aware of the nature of the utility assets and has made every reasonable effort to ensure that utility services are not interrupted during the pendency of the foreclosure action. Moreover, it has hired a well qualified utility consultant to fairly and professionally assist the Bank in selling its interest in the utility assets to the highest responsible purchaser. In fact, at the outset of the receivership, the Bank expressly requested the receiver to give all parties who have expressed an interest in purchasing the utility assets a fair and reasonable opportunity to access and evaluate the receivership property.

In summary, if your client is truly interested in purchasing the Bank's interest in the utility assets, please have your client make an offer. As explained above, all potential purchasers who have expressed an interest in acquiring the Bank's interest in the utility assets (including your client) were provided with a draft purchase and sale agreement on March 4, 2010. Earlier today, all of those potential purchasers, including your client, were provided further instructions

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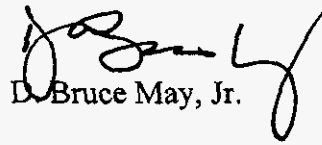
<sup>1</sup> The foreclosure action was instituted on October 6, 2008, in the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida titled Compass Bank v. Service Management Systems, Inc., et al., (Case No. 05-2008-CA-61639).

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to provide offers in a term sheet by 4:00 p.m. on March 18, 2010. If your client elects to make an offer, be assured that the offer will be fairly considered by the Bank.

Sincerely,

HOLLAND & KNIGHT LLP



D. Bruce May, Jr.

DBM:kjg

cc: Ann Cole, Commission Clerk, Florida Public Service Commission  
French Yarbrough, Compass Bank  
Patrick Patangan, Esq.

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