

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SECURITIES AND EXCHANGE COMMISSION, :
 :
 : Plaintiff, :
 :
 : vs. :
 :
AMERIFIRST FUNDING, INC., et al., :
 :
 : Defendants, :
 :
 : and, :
 :
AMERICAN EAGLE ACCEPTANCE CORP., et al. :
 :
 : Relief Defendants. :
 :

Civil Action No.
3:07-CV-1188-D

**OPPOSITION TO DEFENDANT DENNIS W. BOWDEN'S MOTION
TO EXTEND TIME AND MOTION TO COMPEL**

I. PRELIMINARY STATEMENT

The Commission admits to multiple layers of confusion in formulating a response to Defendant Dennis W. Bowden's Motion to Extend Time and Motion to Compel ("Bowden Motion"). First, the Bowden Motion fails to describe with specificity the discovery requests he is seeking to place at issue. Second, the Commission looks in vain for any evidence that Mr. Bowden has been denied access to any materials by the Commission or the Receiver. Third, as Mr. Bowden has never formally or informally requested discovery from the Commission or Receiver, the Commission is at a loss to determine why Mr. Bowden has chosen to file a purported "Motion to Compel."

Fortunately, neither the Court nor the Commission need resolve these mysteries in order to respond appropriately to the Bowden Motion. In fact, contrary to Mr. Bowden's vague and unsupported assertions, the Commission and Receiver actively offered Defendants full access to

any materials they wished to review within days of the commencement of the case. This invitation has never been modified or withdrawn. As the Bowden Motion has no factual or legal basis, the Court should deny it in its entirety.

II. THE BOWDEN MOTION FAILS TO IDENTIFY THE DISCOVERY THAT IS THE SUBJECT OF THE MOTION

Given the ambiguity of Bowden's description, the Commission cannot determine whether the Bowden Motion is referring to discovery requests that are still pending or discovery requests that are already the subject of a motion to compel by the Commission. On January 30, 2008, the Commission filed a Motion to Compel Defendant Dennis W. Bowden to Respond to Discovery Or, In the Alternative, to Preclude Dennis W. Bowden From Presenting Certain Evidence ("Motion to Compel"). [Docket ## 219-220]. The Motion to Compel requests that the Court require Bowden to provide adequate responses to a First Request for Production of Documents and Second Set of Interrogatories propounded to Bowden. Bowden has failed to respond to the Motion to Compel, which is still pending.

On January 28, 2008, the Commission served on Bowden its Second Set of Requests for Admissions and its Third Set of Interrogatories. Bowden's responses to this discovery, which was prompted by issues raised by defense counsel at the deposition of William Brown, are delinquent. On February 7, 2008, the Commission served on Bowden its Second Request for Production of Document and Fourth Set of Interrogatories. These requests were propounded in response to Bowden's Nature of Claims of Defense of Defendant Dennis W. Bowden, *pro se*, Pursuant to Fed.R.Civ.P. (26) [*sic*], belatedly filed with the Court on January 30, 2008. [Docket # 222].

Bowden's deadlines to respond to the Motion to Compel and the January 28 discovery have already passed and his response to the February 7, 2008 discovery is approaching; he could be asking the Court to give him additional time for any one of these obligations. Bowden's sketchy

description, however, makes it impossible for the Commission to determine the subject of the Bowden Motion.

III. CONTRARY TO BOWDEN'S CLAIM, NEITHER THE COMMISSION NOR THE RECEIVER HAVE DENIED ANY REQUEST FOR ACCESS TO AMERIFIRST BUSINESS RECORDS OR OTHER DOCUMENTS

Whatever the subject of the Bowden Motion, however, it should be denied because the requests for relief are predicated on representations to this Court that are completely false. Contrary to Bowden's claim, he has never been denied access to any documents or other materials in the possession of the Commission or the Receiver.

Within a week after the Commission filed its Complaint on July 2, 2007, the Commission offered Bowden's counsel, Phillip Offill, complete access to all non-privileged documents in the Commission's possession, including all records related to the Commission's investigation. [Norris Dec. at ¶ 3, Exh. 1]. On July 9, 2007, Mr. Offill inspected and copied documents at the Fort Worth Regional Office of the Commission. [*id.*]. Similarly, the Receiver immediately offered to provide Bowden's counsel with full access to all Receivership Records. [Norris Dec. at ¶ 4, Exh. 2]. Shortly after the Receiver offered to make all records available, Bowden's counsel reviewed and copied selected documents. [Norris Dec. at ¶ 4].

Neither the Commission nor the Receiver ever withdrew their offers to provide complete access to records in their possession. [Norris Dec. at ¶ 5]. Nor was this offer rescinded in any way after Bowden began acting as a *pro se* litigant. [*id.*].

Bowden's claim that "the SEC and the Receiver have not responded to requests for access copies of . . . data" is entirely false. Bowden, in fact, has never made a request for access to any documents or records in the possession of either the Commission or the Receiver. [Norris Dec. at ¶¶ 6 and 7]. Not surprisingly, therefore, Bowden fails to provide concrete evidence that he has ever made such a request.

Bowden has never propounded any formal discovery requests or made an informal request for access to Commission or Receivership records. As Bowden's delinquency is the product of his own lack of diligence, he has not demonstrated "good cause" for an extension of time. Similarly, in the absence of any request whatsoever for the information he purports to seek, he has no standing to ask the Court to "compel" the production of records.

IV. CONCLUSION

The Commission requests that the Court deny Defendant Dennis W. Bowden's Motion to Extend Time and Motion to Compel in its entirety.

/s/ Jeffrey B. Norris
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CERTIFICATE OF SERVICE

I hereby certify that on this 5th of March 2008, I electronically filed the foregoing ***Opposition to Defendant Bowden's Motion to Extend Time and Motion to Compel***, with the Clerk of the Court for the Northern District of Texas, Dallas Division, by using the CM/ECF system which will send a notice of electronic filing to the following CM/ECF participants.

Jeffrey B. Norris, *Counsel for Plaintiff*
Spencer Barasch, *Counsel for Receiver, AmeriFirst Funding, Inc. and AmeriFirst Acceptance, Inc.*
Joe C. Holzer, *Receiver's Counsel*
Matthew G. Nielsen, *Receiver's Counsel*
Suzanne B. Campbell, *Receiver's Counsel*
Ed Tomko, *Counsel for Defendant Kingston and United Financial Markets, Inc.*
Robin Foret, *Counsel for Defendant Kingston and United Financial Markets, Inc.*
William M. Ravkind, *Counsel for Defendant Bruteyn*
John H. Carney, *Counsel for Defendant Bruteyn*
Darla Stockton Roden, *Counsel for Receiver*

I further certify that on the 5th day of March, 2008, I served a true and correct copy of the foregoing ***Opposition to Defendant Bowden's Motion to Extend Time and Motion to Compel*** and the notice of electronic filing by depositing a copy thereof in the U.S. Mail or by electronic mail or in an authorized Federal Express depository at Fort Worth, Texas, with first class or overnight express charges prepaid and addressed to the following parties and persons entitled to notice that are non-CM/ECF participants:

| | |
|---------------------------------------|------------------|
| William Brown | Dennis W Bowden |
| American Eagle Acceptance Corporation | 10220 Marsh Lane |
| 12221 Merit Drive, Suite 1400 | Dallas, TX 75229 |
| Dallas, Texas 75251-2280 | |
| <i>Receiver</i> | |
| <i>Via Electronic Mail</i> | |

Hess Financial Corporation
3333 Lee Parkway, Suite 600
Dallas, Texas 75219-5117

/s Jeffrey B. Norris
Jeffrey B. Norris

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SECURITIES AND EXCHANGE COMMISSION,

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and,

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**APPENDIX IN SUPPORT OF OPPOSITION TO DEFENDANT DENNIS W.
BOWDEN'S MOTION TO EXTEND TIME AND MOTION TO COMPEL**

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**DECLARATION OF JEFFREY B. NORRIS IN OPPOSITION
TO DEFENDANT DENNIS W. BOWDEN'S MOTION
TO EXTEND TIME AND MOTION TO COMPEL**

1. I, Jeffrey B. Norris, make the following declaration under penalty of perjury in accordance with 28 U.S.C. § 1746. I have personal knowledge of the matters set forth herein, except for those matters stated on information and belief, and as to those matters I believe them to be true, and could and would testify thereto under oath if called upon as a witness.

2. I am over 21 years of age and am employed by the Securities and Exchange Commission ("Commission") as a trial attorney. I have been employed by the Commission since February 1992. I am the trial attorney chiefly responsible for this matter. I am admitted to practice law in the United States District Court for the Northern District of Texas and numerous other federal courts.

3. On or about July 8, 2007, Phillip Offill, counsel for Defendant Dennis Bowden, requested access to all documents in the Commission's possession relevant to the civil injunctive action. The Commission agreed to provide Defendants with immediate access to all

documents in its possession, including the entire investigative record. A true and copy of my e-mail correspondence arranging to permit Defendants' counsel to review and copy the Commission's documents is attached as Exhibit 1 to this Declaration. On July 9, 2007, Mr. Offill reviewed all non-privileged documents in the Commission's possession at the Fort Worth Regional Office of the Commission.

4. Shortly after the filing of the Commission's Complaint, I became aware that Mr. Bowden's counsel also requested access to materials in the possession of the Receiver. The Receiver's office also made all Receivership Records immediately available to Defendants' counsel. True and correct copies of correspondence from Receiver's counsel to Mr. Bowden's counsel, offering to make the Receivership Records available, are attached as Exhibit 2 to this Declaration. Shortly after the invitation was issued, Mr. Offill and Tamara Burleson, Bruteyn's assistant, reviewed and copied Receivership Records at the Lee Parkway Office of AmeriFirst. Although invited to do so, Bowden's counsel did not seek to review documents at any other AmeriFirst office.

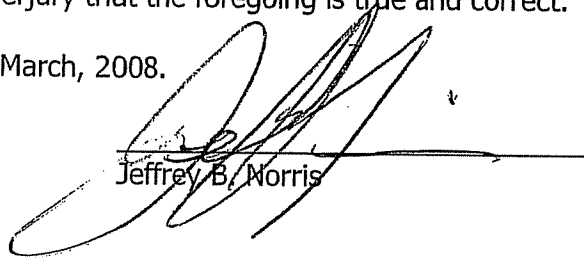
5. The Commission has remained willing to produce all records in its possession on reasonable notice, both when Dennis Bowden was represented by counsel and after he assumed *pro se* status. Based on my communications with the Receiver and his counsel, I am certain that the Receiver has also been willing to provide access to any Receivership Records on reasonable notice.

6. At no time has Dennis Bowden propounded a formal discovery request to the Commission seeking access to any materials in the Commission's possession. Moreover, Dennis Bowden has never made any informal request for access to Commission documents. Accordingly, the Commission has never "refused" to provide Bowden with any materials he has requested.

7. I have also spoken to the Receiver and Receiver's counsel concerning Bowden's claim that he has been refused access to documents and databases relating to the AmeriFirst business entities. The Receiver categorically denies that Bowden has ever requested access to such materials. Accordingly, the Receiver has never "refused" any request by Bowden for access to Receivership Records.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 5th day of March, 2008.



Jeffrey B. Norris