

TRULINCS 54001048 - BRENNERMAN, RAHEEM J. - Unit: ALF-U-B

FROM: 54001048
TO:
SUBJECT: SUBMISSION TO COURT (17-cr-0337 (RJS))
DATE: 05/11/2023 05:53:40 PM

x

Raheem J. Brennerman
Reg. No. 54001-048
FCI Allenwood Low
Federal Correctional Institution
P. O. Box 1000
White Deer, Pa. 17887-1000

Hon. Richard J. SULLIVAN
UNITED STATES DISTRICT COURT
Southern District of New York
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10007

-and-

Ruby KRAJICK
Clerk of Court
UNITED STATES DISTRICT COURT
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

May 11, 2023

BY CERTIFIED FIRST CLASS MAIL

Regarding: United States v. Brennerman, Case no. 1:17-cr-0337 (RJS)
RESPONSE TO ORDER AT EFC NOS. 289, 291 AND NOTIFICATION OF VIOLATION
OF THE LAW/DEFENDANT'S HUMAN, CIVIL & CONSTITUTIONAL RIGHTS, IN
SEEKING APPROPRIATE RELIEF (THE "RELIEF")

Dear Judge Sullivan:

Defendant Pro Se Raheem J. Brennerman ("Brennerman") respectfully submits this correspondence in response to this Court's order at EFC Nos. 289, 291 and to notify this Court of its violation of the law/Defendant's human, civil and Constitutional rights, in seeking appropriate relief (the "Relief").

DISCUSSION:

On June 24, 2018, Brennerman submitted at: 1:17-cr-0337 (RJS), EFC No. 167, copies of Government exhibits - GX1-57; GX1-57A; GX529: GX 1-73 which were adduced at trial to demonstrate that he (Brennerman) interacted with Scott Stout and Morgan Stanley Smith Barney, LLC where he (Brennerman) opened his wealth management brokerage account. Brennerman's aforesaid submissions was to bolster his argument for judgment of acquittal pursuant to Rule 29 of the Federal Rule of Criminal Procedure (Fed. R. Crim. P. 29), arguing that all evidence adduced by the Government at trial demonstrated and highlighted that his interaction was with Morgan Stanley Smith Barney, LLC and that Government witness,

Barry Gonzalez, the FDIC commissioner testified that Morgan Stanley Smith Barney, LLC was not FDIC insured hence there was no federal jurisdiction to even indict (charge) him (Brennerman) much less prosecute and conviction him for bank fraud and conspiracy to commit bank fraud. The basis for the motion pursuant to Rule 29 of the Federal Rule of Criminal Procedure was for this Court to acquit him of the bank fraud charges even where the jury had capriciously convicted him because jurors are unfamiliar with the legal standards and the law.

A copy of the submission at: 1:17-cr-0337 (RJS), EFC No. 167 is appended to this correspondence as "Exhibit C"

On November 19, 2018, during sentencing at: 1:17-cr-0337 (RJS), EFC No. 206 (Sentencing Tr. 19:12-22), Judge Sullivan stated:

".....But the bank fraud was a scheme or artifice to defraud the private banking arm of Morgan Stanley to enable Mr. Brennerman to get access to the perks which are tangible. They're worth money, free checking, among them. I don't get that. And some other perks. But also to get more intangible perks, which would be access to other arms of the Morgan Stanley family of entities.

I'm only really focused on the first category here. It seems to me the first category here, there's been no evidence that I've seen that suggests that was worth more than \$6,500 or so."

A copy of the excerpt from the Sentencing Transcript cited above is appended to this correspondence as "Exhibit A"

On November 19, 2018, Judge Sullivan made such promulgation after denying the motion for judgment of acquittal filed pursuant to Rule 29 of the Federal Rule of Criminal Procedure (Fed. R. Crim. P. 29), where argument was that evidence adduced at trial demonstrated that Brennerman interacted with Morgan Stanley Smith Barney, LLC where he maintained a wealth management account. And that trial testimony demonstrated that Morgan Stanley Smith Barney, LLC is not FDIC insured, hence there was no violation of the federal bank fraud statute or jurisdiction to convict him. See 1:17-cr-0337 (RJS), EFC No. 167. However, Judge Sullivan denied the motion arguing that Brennerman defrauded the private banking arm of Morgan Stanley which is FDIC insured. See 1:17-cr-0337 (RJS), EFC No. 206:19. Judge Sullivan then proceeded to sentence Brennerman.

On November 7, 2021, Brennerman signed and submitted a 442 page Omnibus motion including Collateral Attack petition at: 1:17-cr-0337 (RJS), EFC No. 269. Supplemental papers and exhibits in support of the Omnibus motion was submitted at: 1:17-cr-0337 (RJS), EFC Nos. 270, 272, 274, 288. Among others, the crux of the argument presented was that Brennerman never or rather did not interact with the private banking arm of Morgan Stanley which is FDIC insured because all evidence adduced by Government at trial demonstrated that Brennerman interacted with Morgan Stanley Smith Barney, LLC which is not FDIC insured. Further that to convict Brennerman of bank fraud and its related conspiracy, the institution which he interacted with must be FDIC insured.

On January 3, 2023 (in-excess of 4 years after November 19, 2018), in adjudicating Brennerman's Omnibus motion including Collateral Attack petition to vacate the judgment and set-aside the sentence pursuant to 28 United States Code Section

2255 (28 U.S.C.S. 2255) at: 1:17-cr-0337 (RJS), EFC Nos. 269, 270, 272, 274, 288. Judge Sullivan promulgated at: 1:17-cr-0337 (RJS), EFC No. 289:pgs. 6-7 that:

".....As an initial matter, the record reveals that Brennerman's counsel vigorously pursued the FDIC issue before the jury. For instance, counsel elicited testimony from a government witness that Morgan Stanley Smith Barney, LLC was not insured by the FDIC. (Tr. at 1059:9-11.) He further elicited testimony that affiliate entities within a corporate family - like Morgan Stanley Smith Barney, LLC and Morgan Stanley & Company, LLC - must obtain "separate certificate[s] of insurance to be FDIC insured." (Tr. at 1060:24-1061:5). In summation, Brennerman's counsel again argued that "the law absolutely requires that the bank...targeted in a fraud....be insured by the FDIC" (Tr. at 1538:9-10), and that "Brennerman was not looking to take....money" from "wealth management arm of Morgan Stanley.....the only arm of Morgan Stanley [at issue] that was FDIC insured" (Tr. at 1539:9-14). In short, Brennerman's allegation that his counsel failed to press the FDIC argument before the jury is plainly contradicted by the record"

A copy of the excerpt from Judge Sullivan's January 3, 2023 promulgation cited above is appended to this correspondence as "Exhibit B"

Judge Sullivan's Jan. 3, 2023 promulgation at 1:17-cr-0337 (RJS), EFC No. 289:pgs. 6-7 was in significant contradiction to his prior promulgation on November 19, 2018 at: 1:17-cr-0337 (RJS), EFC No. 206:19 when he (Judge Sullivan) sentenced Brennerman, specifically the statement: "....For instance, counsel elicited testimony from a government witness that Morgan Stanley Smith Barney, LLC was not insured by the FDIC. (Tr. at 1059:9-11)..." demonstrates, first, that the Court (Judge Sullivan) lacked jurisdiction to convict and sentence Brennerman for conspiracy to commit bank fraud in violation of 18 United States Code Section 1349 (18 U.S.C.S. 1349) and bank fraud in violation of 18 United States Code Section 1344 (18 U.S.C.S. 1344). Second, that Brennerman did not violate the federal bank fraud statute. Third, that Judge Sullivan intentionally misrepresented (fabricated) the evidence on November 19, 2018 at 1:17-cr-0337 (RJS), EFC No. 2016:19, by surreptitiously supplanting Morgan Stanley Smith Barney, LLC ("MSSB") which is not FDIC insured (and all evidence adduced at trial demonstrated Brennerman interacted with) with the private banking arm of Morgan Stanley ("MSPB") which is FDIC insured, so as to falsely satisfy the law and federal statute, and finally, that the adjudication of Brennerman's direct appeal by the Second Circuit U.S. Court of Appeals was erroneous where the Second Circuit panel Court intentionally generalized Morgan Stanley as a single entity without considering the trial records which Judge Sullivan now succinctly outline in his Jan. 3, 2023 promulgation.

Judge Sullivan further cites to other erroneous promulgation by the Second Circuit panel Court with respect to the ICBC document including the transaction underwriting file, where they falsely stated: "[t]he only indication that such documents are extant comes from Brennerman's bare assertion." Brennerman II, 818 F. App'x at 30. This was even after Brennerman submitted the trial records with his Collateral Attack petition which demonstrated that government witness, Julian Madget testified on record that the ICBC document including the underwriting file which documents the basis for ICBC approving the finance [at issue], are extant and were provided to ICBC's New York based lawyers Linklaters LLP (see 1:17-cr-0337 (RJS),

Trial Tr. 551-554). Brennerman also submitted on record (at EFC No. 274) that ICBC's New York based lawyer Linklaters LLP wrote to him (Brennerman) on March 14, 2022 to confirm that they are in possession of the ICBC document, however that as a law firm, they require either an order from the Court or consent from their client to produce the ICBC document to Brennerman. Even Judge Sullivan conceded on record at trial that government witness, Julian Madgett testified that the ICBC documents are extant and with the bank's file in London, U.K. (see 1:17-cr-0337 (RJS), Trial Tr. 617) as "Exhibit D" A copy of excerpt from Julian Madgett's trial testimony testifying that the ICBC documents are extant and with their New York based lawyers is appended to this correspondence as "Exhibit E"

Given the above and pursuant to Judge Sullivan's own promulgation on record (see appended "Exhibits A & B"), this Court (Judge Sullivan) exhibited partiality, first, by convicting and sentencing Brennerman for bank fraud and bank fraud conspiracy where the Court lacked jurisdiction; second, by convicting Brennerman for bank fraud and bank fraud conspiracy where no conduct violated the federal bank fraud statute; third, by this Court (Judge Sullivan) intentionally misrepresenting (fabricating) the evidence during sentencing, on Nov. 19, 2018, by surreptitiously supplanting a non-FDIC insured institution MSSB with MSPB, a FDIC insured institution, so as to falsely satisfy the law and the federal bank fraud statute to convict and imprison Brennerman.

Supreme Court precedent makes clear that a criminal defendant tried by a partial judge is entitled to have his conviction set aside no matter how strong the evidence against him. See *Edward v. Balisok*, 520 U.S. 641, 647, 117 S. Ct. 1684, 13 L. Ed 2d 906 (1997); *Arizona v. Fulminante*, 499 U.S. 279, 308, 111 S. Ct. 1246, 113 L. Ed 2d 302 (1991). Hence, the entire case and conviction should be set aside.

This correspondence and the appended exhibits are submitted pursuant to Federal Rule of Criminal Procedure 49(b)(2)(B)(i) in reliance on Federal Rule of Criminal Procedure 49(b)(5).

CONCLUSION

For the reasons cited above, Brennerman respectfully notifies this Court of its violation of the law and Defendant's human, civil and Constitutional rights in seeking appropriate relief.

Dated: May 11, 2023
White Deer, Pa. 17887-1000

Respectfully submitted

/s/ Raheem J. Brennerman
RAHEEM JEFFERSON BRENNERMAN

IBJQBRES

1 are distinct crimes but they all involve the same conduct; in
2 most cases you group them all together and you do an analysis
3 all together. You don't count them separately and add them up.
4 You do them together. So the conspiracy to commit bank and
5 wire fraud, the bank fraud and the wire fraud are all treated
6 together, and they're all covered by the same guidelines
7 provision, which is Section 2B1.1. That's the general fraud
8 provision under the guidelines.

9 Now, I do think, frankly, that it's worth pointing out
10 that the bank fraud calculation here I think would be quite
11 different than the wire fraud, and I guess I want to hear from
12 the parties on that. But the bank fraud here was a scheme or
13 artifice to defraud the private banking arm of Morgan Stanley
14 to enable Mr. Brennerman to get access to the perks which are
15 tangible. They're worth money, free checking among them. I
16 don't get that. And some other perks. But also to get some
17 more intangible perks, which would be access to other arms of
18 the Morgan Stanley family of entities.

19 I'm only really focused on the first category here.
20 It seems to me the first category here, there's been no
21 evidence that I've seen that suggests that was worth more than
22 \$6,500 or so.

23 Mr. Roos, do you disagree?

24 MR. ROOS: I think that's right, your Honor.

25 THE COURT: You agree, OK.

adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland*, 466 U.S. at 689.

With respect to *Strickland*'s second prong, a "reasonable probability" that the outcome would have been different but for counsel's deficient performance is "a probability sufficient to undermine confidence in the outcome." *Id.* at 694. "[A]n 'error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.'" *Henry v. Poole*, 409 F.3d 48, 63 (2d Cir. 2005) (quoting *Strickland*, 466 U.S. at 691). In other words, to find prejudice, a court must conclude that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Id.* (quoting *Strickland*, 466 U.S. at 686).

Brennerman claims that he received ineffective assistance because his trial counsel failed to argue that Morgan Stanley Smith Barney, LLC was not an FDIC-insured institution as required for bank fraud. He also asserts that his counsel should have obtained and introduced at trial ICBC's underwriting file and his birth certificate to "demonstrate his innocence." (Petition at 41.) None of these arguments is persuasive.

As an initial matter, the record reveals that Brennerman's counsel vigorously pursued the FDIC issue before the jury. For instance, counsel elicited testimony from a government witness that Morgan Stanley Smith Barney, LLC was not insured by the FDIC. (Tr. at 1059:9–11.) He further elicited testimony that affiliate entities within a corporate family – like Morgan Stanley Smith Barney, LLC and Morgan Stanley & Company LLC – must obtain "separate certificate[s] of insurance to be FDIC insured." (Tr. at 1060:24–1061:5.) In summation, Brennerman's counsel again argued that "the law absolutely requires that the bank . . . targeted in a fraud . . . be insured by the FDIC" (Tr. at 1538:9–10), and that "Brennerman was not looking to take . . . money" from

“the wealth management arm of Morgan Stanley, . . . the only arm of Morgan Stanley [at issue] that . . . was FDIC insured” (Tr. at 1539:9–14). In short, Brennerman’s allegation that his counsel failed to press the FDIC argument before the jury is plainly contradicted by the record. *See Slevin v. United States*, 234 F.3d 1263 (2d Cir. 2000) (agreeing with the district court that the defendant failed to establish an ineffective-assistance claim because the defendant’s allegations were “contradicted in several instances by evidence in the record”); *Puglisi v. United States*, 586 F.3d 209, 214 (2d Cir. 2009) (collecting cases). As a result, Brennerman’s “bald assertion[s]” to the contrary are insufficient to meet either prong of the *Strickland* standard. *United States v. Blau*, 159 F.3d 68, 75 (2d Cir. 1998).

Brennerman’s remaining allegations of ineffective assistance also fail. First, Brennerman argues that his counsel should have requested that the Court “order and compel” the production of ICBC’s “pertinent underwriting file.” (Petition at 39.) But as the Second Circuit ruled on direct appeal, the underwriting file allegedly possessed by ICBC was outside the scope of the government’s disclosure obligations, and “[t]he only indication that such documents are extant comes from Brennerman’s bare assertions.” *Brennerman II*, 818 F. App’x at 30. This Court also previously denied Brennerman’s discovery requests of the underwriting file on numerous occasions, finding, among other things, that this Court has no jurisdiction over ICBC – “a foreign bank located approximately 3,500 miles from the courthouse.” (Doc. No. 249 at 2 (quoting *United States v. Brennerman*, No. 17-cr-155 (LAK), 2017 WL 4513563, at *2 (S.D.N.Y. Sept. 1, 2017)); *see also* Doc. Nos. 242, 249, 251, 253, 255.) Because it would have been “futile or frivolous” for trial counsel to request that the Court compel production of unspecified documents from an entity that was beyond the Court’s jurisdiction, *United States v. Nersesian*, 824 F.2d 1294, 1322 (2d Cir. 1987), the Court cannot say that trial counsel’s failure to make such a request “fell below an

From: BRENNERMAN, R. J @The Executive Office
To: Stout, Scott
Cc: BRENNERMAN R. J@Executive Office
Subject: Re: Morgan Stanley (Wealth Management)
Date: Tuesday, January 8, 2013 9:09:49 AM
Attachments: Morgan Stanley (Client Profile).pdf
Importance: High

Dear Scott,

As discussed, attached is the completed forms, as advised the account will be in the corporate name however you wanted me to also complete a form with personal information. As discussed, I will require Debit Card and AMEX card with the account.

Please let know what are the next steps.

Best Regards

From: Stout, Scott
Sent: Monday, December 10, 2012 1:10 PM
To: mailto:rbrennerman@blacksandspace.com
Subject: RE: 2013 Preparation

Hi RJ,

Just a reminder to get those forms to me so I can get everything in order prior to our lunch on Friday.

Thanks,
Scott

Scott Stout
F.A. - Wealth Management
MorganStanley
Direct: 310 205 4912
9665 Wilshire Blvd., 6th Floor
Beverly Hills, CA 90212

<http://www.morganstanley.com/fa/scott.stout>
scott.stout@morganstanley.com



Kindly provide all personal information.
For additional owners, please complete a 2nd profile.

Full Name KATHLEEN JEFFERSON BRENNERMAN
 Address 245 PARK AVENUE, 31FL
 City NEW YORK State NEW YORK Zip Code 10167
 Home Phone _____ Business _____
 Cell 917 677 6430 Fax 310 861 1057
 SS# or Tax ID [REDACTED] US Citizen Y N
 Marital Status SINGLE #of Dependents N/A Date of Birth 04/21/78
 E-mail Address kbrennerman@blackstonecapital.com
 Telephone access Prompts _____ Mother's Maiden Name _____
 City of Birth _____ or 1st School Attended DWIGHT
 Employer BLACKSTONE CAPITAL ENERGY CORPORATION
 Nature of Business OIL & GAS Occupation OIL & GAS EXECUTIVE
 Est. Annual Compensation \$ 720,000 (BASE SALARY) Employed Since 2010

Primary Source of Income-Check all that apply

Annual Salary X Investments X Retirement Assets _____ Amount \$ _____
 Est. Total Annual Income (all sources) _____
 Est. Liquid Net Worth \$ 45m Est. Total Net Worth \$ _____
 Tax Bracket (percentile) _____

Investment Objectives: (Please rank 1 through 4, in order of priority)

Growth 1 X Current Income 3 Tax Deferral 4 Liquidity 2 X
 Investing Since (year) _____ Stocks 99 Bonds 11 Commodities 01 Options 02
 Risk Tolerance (check one) Aggressive _____ Moderate X Conservative _____
 Speculation Yes _____ No _____

Primary Financial Need: (circle one)

Wealth Accumulation Major Purchase Healthcare Education
 Estate Planning Retirement Charity Income

Outside Investments: Firms Used: _____
 Equities \$ _____ Fixed Income \$ _____ Cash \$ _____ Alt Investments _____
 Time Horizon _____ Liquidity Needs _____

Are you or anyone in your household a major share holder in a publicly traded company? Y N
 Are you an executive of a publicly traded company? Y N
 Do you or anyone in your immediate family work for a brokerage house? Y N
 Is anyone in your immediate family employed by CitiGroup? Y N

[Signature] 1/5/13

Please sign and date above

In order to open your account we are required to obtain this information. Thank you for assisting us.

THIS INFORMATION WILL REMAIN CONFIDENTIAL 02/2012



Kindly provide all personal information.
For additional owners, please complete a 2nd profile.

Full Name JEFFERSON III HOLDINGS LLC
 Address 3960 HOWARD HUGHES PARKWAY, SUITE 500
 City LAS VEGAS State NEVADA Zip Code 89169
 Home Phone _____ Business _____
 Cell 917699 6430 Fax _____
 SS# or Tax ID [REDACTED] US Citizen Y N
 Marital Status MF #of Dependents _____ Date of Birth _____
 E-mail Address _____
 Telephone access Prompts _____ Mother's Maiden Name _____
 City of Birth _____ or 1st School Attended DWIGHT
 Employer _____
 Nature of Business INVESTMENTS Occupation _____
 Est. Annual Compensation \$ _____ Employed Since _____

Primary Source of Income-Check all that apply

Annual Salary _____ Investments _____ Retirement Assets _____ Amount \$ _____
 Est. Total Annual Income (all sources) _____
 Est. Liquid Net Worth \$ _____ Est. Total Net Worth \$ _____
 Tax Bracket (percentile) _____

Investment Objectives: (Please rank 1 through 4, in order of priority)

Growth 1 Current Income 2 Tax Deferral 3 Liquidity 4
 Investing Since (year) _____ Stocks 99 Bonds 99 Commodities 01 Options 02
 Risk Tolerance (check one) Aggressive _____ Moderate X Conservative _____
 Speculation Yes _____ No _____

Primary Financial Need: (circle one)

Wealth Accumulation _____ Major Purchase _____ Healthcare _____ Education _____
 Estate Planning _____ Retirement _____ Charity _____ Income _____

Outside Investments: _____ Firms Used: _____
 Equities \$ _____ Fixed Income \$ _____ Cash \$ _____ Alt Investments _____
 Time Horizon _____ Liquidity Needs _____

Are you or anyone in your household a major share holder in a publicly traded company? Y N
 Are you an executive of a publicly traded company? Y N
 Do you or anyone in your immediate family work for a brokerage house? Y N
 Is anyone in your immediate family employed by CitiGroup? Y N

[Signature] 1/5/13
 Please sign and date above

In order to open your account we are required to obtain this information. Thank you for assisting us.

THIS INFORMATION WILL REMAIN CONFIDENTIAL 02/2012

Morgan Stanley

CLIENT STATEMENT | For the Period January 31, 2013

#BWNJGWM

RAHEEM JEFFERSON BRENNERMAN
245 PARK AVENUE
39 FLOOR
NEW YORK NY 10167-4000

Your Branch

9665 WILSHIRE BLVD STE 600
BEVERLY HILLS, CA 90212
Telephone: 310-285-2600
Alt. Phone: 800-458-9838
Fax: 310-285-2696

Client Interaction Center

800-869-3326
24 Hours a Day, 7 Days a Week

Access your accounts online

www.morganstanley.com/online

Morgan Stanley Smith Barney LLC. Member SIPC.

TOTAL VALUE LAST PERIOD of 12/31/12

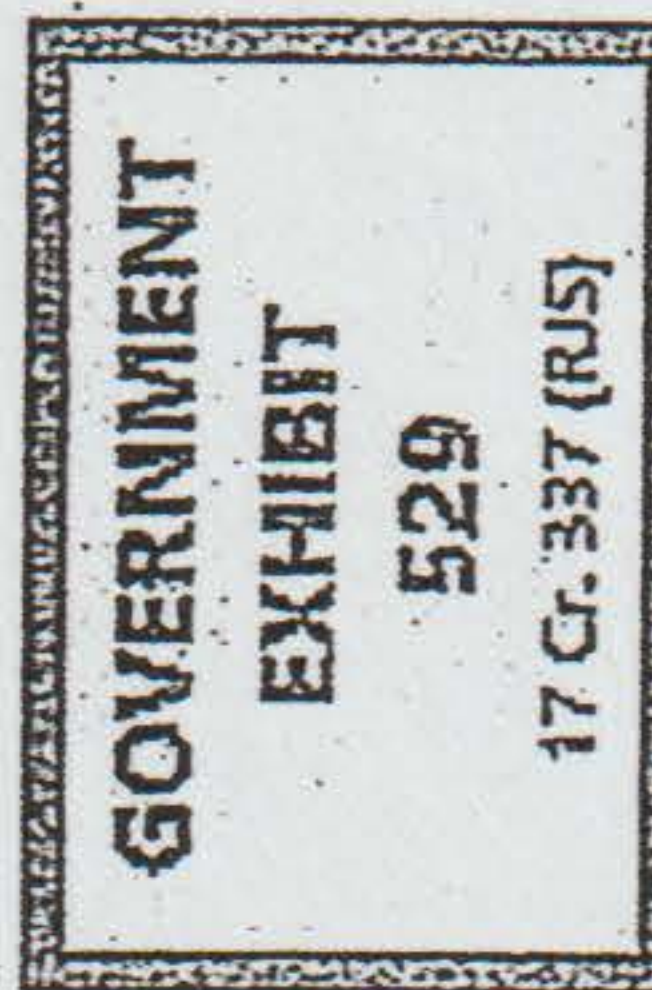
NET CREDITS/DEBITS 200,000.00

CHANGE IN VALUE 0.88

TOTAL VALUE OF YOUR ACCOUNT (as of 1/31/13)
(Total Values include accrued interest) \$200,000.88

Your Financial Advisor

Scott Stout



197-012515-054-1-0

SDNY_008384

From: BRENNERMAN, R. J @The Executive Office
To: Stout, Scott
Cc: Gevarter, Mona
Subject: Re: Platinum AMEX
Date: Wednesday, January 9, 2013 7:24:39 PM
Importance: High

Dear Mona,

Are you able to call me on my cellphone 917 699 6430 regarding the email below

Best Regards

From: Stout, Scott
Sent: Wednesday, January 09, 2013 4:45 PM
To: mailto:rbrennerman@blacksandspace.com
Cc: Gevarter, Mona
Subject: Platinum AMEX

RJ,

Please give Mona a call to set up your Platinum AMEX card. 310 205 4751.

As a Morgan Stanley perk, if you spend \$100k annually we deposit \$500 into your account to cover your annual fee (\$450).

Other MS/Platinum Perks Include:

- First Class Lounge Access
- \$200 annually in airline fee credits (checking bags, etc)
- No foreign transaction fees
- Premium upgrades for car rentals
- Concierge
- 20% Travel Bonus

Scott Stout

F.A. - Wealth Management

MorganStanley

Direct: 310 205 4912

9665 Wilshire Blvd., 6th Floor
Beverly Hills, CA 90212

<http://www.morganstanley.com/fa/scott.stout>
scott.stout@morganstanley.com

Important Notice to Recipients:

GOVERNMENT
EXHIBIT
1-73
17 Cr. 337 (RJS)

Please do not use e-mail to request, authorize or effect the purchase or sale of any security or commodity. Unfortunately, we cannot execute such instructions provided in e-mail. Thank you.

The sender of this e-mail is an employee of Morgan Stanley Smith Barney LLC ("Morgan Stanley"). If you have received this communication in error, please destroy all electronic and paper copies and notify the sender immediately. Erroneous transmission is not intended to waive confidentiality or privilege. Morgan Stanley reserves the right, to the extent permitted under applicable law, to monitor electronic communications. This message is subject to terms available at the following link: <http://www.morganstanley.com/disclaimers/mssbemail.html>. If you cannot access this link, please notify us by reply message and we will send the contents to you. By messaging with Morgan Stanley you consent to the foregoing.

HBUKBRE1

1 MS. FRITZ: Your Honor, your Honor, no. We have it
2 here, but --

3 THE COURT: You haven't served it yet?

4 MS. FRITZ: We wanted to hear what your Honor said.

5 THE COURT: In any event, the witness has indicated he
6 doesn't possess the documents, so the documents are not with
7 him. He doesn't have them. According to his testimony,
8 they're in London with the bank's files that he turned over
9 once the deal went south. He certainly said he didn't review
10 them in preparation for his testimony. He doesn't possess them
11 now.

12 So, to the extent the bank is subpoenaed with a Rule
13 17 subpoena, then that would be a different issue, but I don't
14 think serving Mr. -- who is the lawyer, Mr.?

15 MR. HESSLER: Hessler, your Honor.

16 THE COURT: Yes, Mr. Hessler. I'm sorry.

17 I don't think serving Mr. Hessler is adequate service
18 for purposes of the bank.

19 MS. FRITZ: Let me explain why we did it that way,
20 because initially last night, we had an ICBC subpoena drafted,
21 and the reason that we did it this way is, again, I don't
22 necessarily agree with your Honor's definition of possession.
23 I do think that Julian Madgett, I think quite plainly, has
24 access to these documents. People very rarely walk around with
25 the documents that you're asking for from them, but they do

1 (Jury present)

2 THE COURT: Okay. Have a seat. We will now begin the
3 cross-examination of Mr. Madgett by Mr. Waller.

4 CROSS EXAMINATION

5 BY MR. WALLER:

6 Q. Good afternoon, Mr. Madgett.

7 A. Good afternoon.

8 Q. When did you say you started working for ICBC?

9 A. 2009.

10 Q. And you work for ICBC in London, correct?

11 A. Correct.

12 Q. And it is a subsidiary of a Chinese bank?

13 A. It is a subsidiary and a branch of a Chinese bank.

14 Q. ICBC London is not FDIC insured; is that correct?

15 A. You are referring to the U.S. arrangement?

16 Q. That's correct.

17 A. No, it would not be because it's an operation in the U.K.

18 Q. When your credit committee makes a decision, a credit
19 decision whether or not to give a loan or not to give a loan,
20 what sort of documentation does it produce? Does it produce a
21 memo that explains its reasons or analysis for giving a loan?

22 A. The credit committee will have a series of minutes which
23 reflects a discussion of the case in credit committee and
24 records the decision of the credit committee.

25 Q. Did you ever produce the documents from that credit

1 committee, the ones you just described, to the government?

2 MR. ROOS: Objection.

3 THE COURT: You can answer.

4 A. To my knowledge, no. But I need to state perhaps it's
5 appropriate to say this: After the loan was defaulted, the
6 internal process of the bank means that the direct relationship
7 managers who were responsible for that dialogue step away and
8 the defaulted loan is then passed to a different department.
9 So, I'm not fully aware of all aspects of what has happened to
10 the management of the loan after around April 2014.

11 Q. And when I say produced to the government, I meant to the
12 prosecutors here in this case. You understood that?

13 A. I understood that and to my knowledge, no, that has not
14 been the case.

15 Q. But ICBC did produce a lot of documents to the government,
16 correct?

17 A. All I can state is that the documents were provided to our
18 legal advisors and then our legal advisors have interacted with
19 the U.S. Attorney's office.

20 Q. Would it be fair to say that some documents that are in the
21 underwriting file for ICBC were produced to the document and
22 others were not?

23 A. Some documents will have been passed across. I do not know
24 whether or not all or some. I'm not in -- I don't have that
25 knowledge.

1 Q. Is there an underwriting file for a loan application such
2 as the one we are dealing with in this case?

3 A. There would be a credit application document which is where
4 the case for making the loan has been summarized, and that is
5 the credit application document which then goes to credit
6 committee for approval or decline.

7 Q. Do you know if that -- well who would have prepared that
8 document?

9 A. I would have been one of the main authors of that document.

10 Q. Do you know if that document was produced to the
11 government?

12 A. I do not and I wouldn't see great relevance in it, but I do
13 not know if it has gone to the government.

14 Q. Well, relevance is not really your determination, correct?

15 A. Correct, correct. Yes.

16 Q. So you don't know if it was produced to the government and
17 it certainly wasn't produced to the defense, correct, by ICBC?

18 THE COURT: Well, do you know?

19 THE WITNESS: I don't know, but I'm assuming from your
20 question that it wasn't.

21 THE COURT: Well, don't assume.

22 THE WITNESS: Okay, sorry. My apologies.

23 THE COURT: The jury knows not to assume anything from
24 a question. So, you just answer as to what you know.

25 THE WITNESS: All right.

1 BY MR. WALLER:

2 Q. Was there an answer?

3 A. Could you repeat the question, please?

4 Q. Yes.

5 Do you know if that document that we were talking
6 about was ever produced?

7 THE COURT: He answered. He said I don't know.

8 THE WITNESS: I don't know.

9 THE COURT: And then he started assuming things and
10 that's when I jumped in.

11 BY MR. WALLER:

12 Q. So the answer is you don't know?

13 A. I don't know.

14 Q. Now, you first met Mr. Brennerman in 2011, correct?

15 A. Yes.

16 Q. Did you meet him in person for a meeting?

17 A. Yes.

18 Q. Jumeirah Carlton Tower Hotel, does that sound right?

19 A. On one occasion I met him in a hotel, yes.

20 Q. At that point when you met him I think you testified that
21 there were no firm deals that he was bringing to you at that
22 point? There were no deals that he was bringing to you, he was
23 just making an introduction?

24 A. When the initial interaction between us started, yes.

25 Q. And, do you recall when the first deal was that he brought