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## Suit settled for \$10.5M *Woman left company, taking others*

BY ALAN COOPER

SouthBanc Mortgage dickered for more than a year over an employment contract with Theresa L. Ritter, whom it had hired in June 2002 as vice president of production in its Herndon office.

No agreement had been reached, however, before June 29, 2003, when the company discovered that Ritter had violated its nepotism policy by hiring her mother as an independent contractor. Because of that violation, "and for other reasons including an inability to negotiate a written employment agreement with Ritter," the company alleged, Ritter was terminated.

Over the next three months, Ritter took more than 30 SouthBanc employees with her to form Summit Financial LLC, a subsidiary of Shenandoah Valley National Bank and a direct competitor of SouthBanc.

As a result, SouthBanc and its parent corporation filed suit in Fairfax Circuit Court alleging statutory business conspiracy and other business torts by Ritter, Summit and related companies and eight former SouthBanc employees who went to work for Summit.

The case was settled under confidential terms, but filings with the Securities and Exchange Commission show that Summit Financial Group Inc. paid \$10.5 million last month to settle the claim and as a break-up fee. An earlier agreement had provided for the payment of that amount or, in the alternative, transfer of some of the assets of companies controlled by Danny L. Wiginton, the principal in SouthBanc and related companies, for \$52.5 million cash and stock.

Either party had the option of rejecting the merger and resolving the matter with the \$10.5 million payment. Summit exercised the option.

According to documents filed in the lawsuit, SouthBanc typically mailed 1.7 million letters a month offering to refinance mortgages or provide second deeds of trust to consolidate



loans. The company alleged that it had developed a proprietary method of targeting prospects so that it could accurately predict how many people would respond and how many of those who responded would be likely to take out new mortgages.

Ritter was familiar with the method and the computer software and hardware necessary to support it. She used that knowledge to create essentially the same system at Summit. In fact, SouthBanc alleged, in many states 80 percent of those who had applied for loans from Summit also had received direct mail solicitations from SouthBanc.

In the absence of a contract with Ritter containing an explicit confidentiality agreement, SouthBanc relied on her common law fiduciary duties to an employee and her acknowledgement when she joined the company that she had read its code of ethics, which protected sensitive information from disclosure even after employment is terminated.

SouthBanc alleged that Ritter nevertheless disclosed internal financial information demonstrating the company's profitability, the direct mail procedure and response histories, a direct mailing template and personal information of its employees.

When it became apparent in September 2003 that Ritter and Summit were raiding SouthBanc, the company sent cease and desist letters and filed suit three months later. SouthBanc also sent preservation letters to the defendants advising them not to dispose of any relevant evidence and admonishing them to refrain from "altering or destroying any media that stores electronic data where such activity could result in the alteration or loss of any electronic data."

SouthBanc subsequently agreed to pay for the cost of a forensic analysis of Ritter's computer and those of two other Summit employees. That analysis disclosed proprietary information from SouthBanc on the defendants' computers and the attempted deletion by Ritter of relevant files after the receipt of the preservation letters.

Ritter and the other individual defendants were represented initially by Thomas K. Plofchan Jr. However, he withdrew from the representation after a conflict developed between Ritter and the other individual defendants.

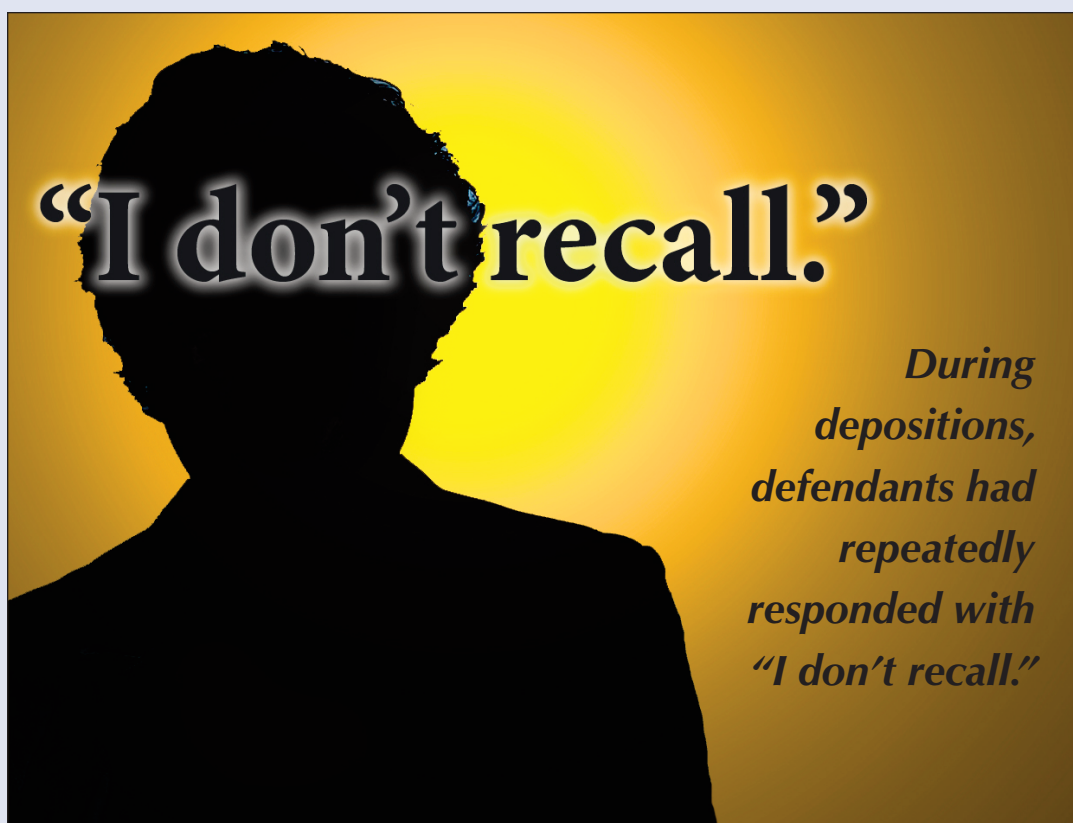
During depositions, those defendants had repeatedly responded with "I don't recall," and the attorneys who succeeded Plofchan subsequently filed amended responses and amended interrogatory answers after asserting that Plofchan had told the defendants that they were to respond in that manner unless they were absolutely certain of every detail related to the subject.

Trial judges subsequently ordered Ritter and two other defendants to reimburse SouthBanc for part of the cost of the forensic analysis of their computers.

The judges also ruled that the testimony by the defendants at a hearing about their communications with Plofchan waived most of their claims to the attorney-client and work product privileges.

And they ruled that deletion of the documents by Ritter violated "her duty to preserve potentially relevant evidence and constitute[d] spoliation, as a matter of law." As a result, the judges ruled, they would give an adverse instruction at trial with respect to her and would allow SouthBanc's counsel to argue that the inference would apply to Summit as well.

W. Michael Holm, the Vienna attorney who represented SouthBanc, said the confidentiality agreement prevented him from discussing the settlement. He said both SouthBanc and Summit have abandoned the business that was the source of the dispute.



W. MICHAEL HOLM

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