

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

WINNER ROAD PROPERTIES, LLC,)
)
 Plaintiff/Counter-Defendant,)
)
 v.)
)
 BMO HARRIS BANK, N.A.,)
)
 Defendant/Counter-Claimant/)
 Cross-Claimant)
)
 v.)
)
 JO ANN HOWARD & ASSOCIATES, P.C.,)
)
 Cross-Defendant)

No. 4:16-CV-1395 CAS

MEMORANDUM AND ORDER

Pending before the Court is cross-defendant Jo Ann Howard & Associates, P.C.’s motion to abstain or, alternatively, motion to abate and motion for more definite statement. Jo Ann Howard & Associates, P.C. (“Jo Ann Howard”) asks that the Court abstain in this matter under the discretionary abstention doctrine of Burford v. Sun Oil Co., 319 U.S. 315 (1943), in light of the fact that there is pending insurance receivership litigation, which is ongoing in State of Texas v. Memorial Service Life Insurance Company, et al., No. D-1-GV-08-000945 (250th Dist. Ct., Travis Cnty, Tex. filed Sept. 12, 2008) (“Texas Receivership Litigation”).

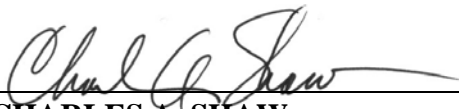
Finding the initial briefing on the motion to be insufficient to decide the issue, the Court, in a Memorandum and Order dated March 14, 2019, ordered that Jo Ann Howard “shall file a memorandum, supported by any relevant exhibits, to establish that the Third Amended and Restated Agreement for Mount Washington Cemetery Preneed Trust, also known as the Merchandise and

Services Trust, currently belongs to the receivership estate in the Texas Receivership Litigation.” Doc. 147 at 8. The Court specifically ordered that Jo Ann Howard “shall address in its memorandum the effect of the settlement agreement between [BMO Harris Bank, N.A.] and the [Special Deputy Receiver] in [Jo Ann Howard & Assocs., P.C. v. Cassity, 4:09-CV-1252 ERW (E.D. Mo. filed Aug. 6, 2009)] on the receivership estate’s interest in the Merchandise and Services Trust.” Id.

Jo Ann Howard filed its response to the Court’s Memorandum and Order on March 27, 2019. In its memorandum, Jo Ann Howard completely ignored the Court’s explicit directive to address the effect of the settlement agreement on the receivership estate’s interest in the Merchandise and Services Trust, and made no mention of the settlement agreement. As the Court believes the settlement agreement may be relevant as to whether it should abstain in this matter,

IT IS HEREBY ORDERED that on or before April 22, 2019, Jo Ann Howard & Associates, P.C., shall file a memorandum addressing the effect of the settlement agreement between BMO Harris Bank, N.A. and the Special Deputy Receiver in Jo Ann Howard & Assocs., P.C. v. Cassity, 4:09-CV-1252 ERW (E.D. Mo. filed Aug. 6, 2009) on the receivership estate’s interest in the Third Amended and Restated Agreement for Mount Washington Cemetery Preneed Trust, also known as the Merchandise and Services Trust.

IT IS FURTHER ORDERED that Winner Road Properties, LLC, and BMO Harris Bank, shall file their responses, if necessary, on or before May 2, 2019.



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 11th day of April, 2019.