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KEVIN M. ELWELL

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Attorney at Law

Admitted in South Carolina, Georgia and North Carolina

27 January 2006

Mr. Phillip Russ Smith  
Adzoox  
601 Cleveland Street, Apt. 5-C  
Greenville, South Carolina 29601

RE: *BidZirk, LLC v. Smith*  
United States District Court for the District of South Carolina  
Civil Action No. 6:06-CV-00109-HMH

Dear Mr. Smith:

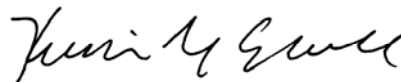
This correspondence is to follow our abbreviated telephone conversation of today, which ended prematurely when you called me an idiot and hung up on me.

Your request that everything sent to you in this case be sent certified mail is unreasonable, and is denied. Neither I nor Mr. Schmidt is required to communicate with you through your requested means, so long as those communications otherwise comply with applicable procedural rules. Your contention that you are not required to respond to anything sent to you in this case that is not sent certified mail is incorrect. As indicated, you can decline at your peril to respond to pleadings filed in this case. As mentioned in my letter to you of December 30, you should obtain a PACER user name and password in order to file responsive pleadings in this case, per federal local rules. I refer you to Fed. R. Civ. P. 12 regarding your obligations to file responsive pleadings in this action.

You referenced an alleged required mediation in your voicemail message. Mediation is standard in federal cases, or Judge Herlong may order or request the parties to mediate, but there otherwise is no requirement that the parties do so unless all agree. You are not "owed" a mediation conference at this time as you claim, nor is any "right" to mediation being denied you at this time.

Further, you are not being sued for "millions of dollars," as you indicated on the telephone. Simply remove all references to BidZirk, Mr. Schmidt and Ms. Patterson from your website, covenant not to re-publish those or other defamatory references elsewhere, and this matter can be resolved.

Sincerely yours,



Kevin M. Elwell

cc: Mr. Daniel G. Schmidt, III

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