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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF WESTCHESTER

-----x
JOSHUA BERNSTEIN,

Plaintiff,

-against-

BAYROCK GROUP LLC,

Defendant.

Index No. 02579/09
-----x

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11 Martine Avenue
White Plains, New York

Schwartz

March 5, 2010
11:15 a.m.

Deposition of JULIUS R. SCHWARZ,
held at the Law Offices of Gerry E. Feinberg,
pursuant to court order, before Barbara
Driscoll, a Notary Public of the State of
New York.

ELLEN GRAUER COURT REPORTING CO. LLC
126 East 56th Street, Fifth Floor
New York, New York 10022
212-750-6434
Ref: 92828

1 A P P E A R A N C E S:

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4 Attorney for Plaintiff

5 11 Martine Avenue

6 White Plains, New York 10606-0134

7 and

8 FREDERICK M. OBERLANDER, ESQ.

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11 Montauk, New York 11954

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14 AKERMAN SENTERFITT LLP

15 Attorneys for Defendant

16 335 Madison Avenue, Suite 2600

17 New York, New York 10017-4636

18 BY: MARTIN DOMB, ESQ.

19
20
21 ALSO PRESENT:

22 Joshua Bernstein

23 Neil Pasmanik, Esq.

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SCHWARZ

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A. He did.

Q. Did you draft part of it?

A. Yes.

Q. Did Mr. Kriss have an employment agreement?

A. Yes.

Q. Did you draft part of that?

A. Yes.

MR. OBERLANDER: Off the record.

(Discussion off the record.)

Q. In your capacity as executive vice president, what authority did you have to bind the company?

A. I had authority to sign for the company on transactional matters.

Q. Was there a dollar limit?

MR. DOMB: Did you finish your answer?

MR. OBERLANDER: I thought he was done.

THE WITNESS: I finished.

Q. Was there a dollar limit?

A. Under the resolution that gave me that authority, I do not believe I did. I don't believe there was a dollar limit.

Q. Beyond signing for things, what other

1 SCHWARZ

2 commitments could you make? Could you enter into
3 contracts that called for other performance in the
4 payment of money?

5 A. There were limitations. I don't
6 remember exactly. Some of them were -- one
7 limitation was employee compensation.

8 Q. What was that limitation?

9 A. That was in the resolution giving me
10 the power.

11 Q. But was the limitation that you could
12 hire -- you could not?

13 A. I could not.

14 Q. Could you fire?

15 A. I believe I could, yes.

16 Q. Jody Kriss, what authority did he have
17 in the company, by which I mean the same as I just
18 asked you?

19 A. I would say during his term of
20 employment, it was the same because it was
21 pursuant to the same resolution.

22 Q. So he couldn't hire?

23 A. I don't recall if -- I believe you
24 needed -- yes. I believe consent was required to
25 hire and to change compensation of employees.

SCHWARZ

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Q. Consent of who?

A. Consent would be of Mr. Arif.

Q. You earlier testified that when you came to Bayrock, that Jody Kriss was senior vice president?

A. Yes, to my knowledge.

Q. To your knowledge, did he retain that position during the course of his work there?

A. Once I started, I believe his title was director of finance.

I also believe he did sign as senior vice president. I don't recall if it was -- I believe he was senior vice president and director of finance during the entire period.

Q. Felix Sater, was Felix Sater ever employed by Bayrock Group LLC?

A. Yes.

Q. In what capacity?

A. He was tasked with trying to source deals and transactions.

Q. Did he have a title?

A. No.

Q. We can break if you need to take a phone call.

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18 BY: MARTIN DOMB, ESQ.
1920
21 ALSO PRESENT:

22 Joshua Bernstein

23 Brian Halberg, Esq.
24
25

1 SCHWARZ

2 was -- you said earlier today he was sent to South
3 Africa on company business at one point in time?

4 A. Yes.

5 Q. With respect to the hiring of
6 Mr. Bernstein, were you involved in that at all?

7 A. No.

8 Q. As far as his compensation when he was
9 hired, who made that determination?

10 A. Everything had to be approved by
11 Mr. Arif, but I believe he negotiated with Jody
12 Kriss and perhaps Felix, but I am not really 100
13 percent sure.

14 Q. There came a point in time when his
15 salary was increased?

16 A. I believe that is correct.

17 Q. Were you involved in that
18 determination?

19 A. I don't recall.

20 Q. Did there come a time that you learned
21 his salary had been increased?

22 A. Yes.

23 Q. How did you learn that?

24 A. I don't recall.

25 Q. Do you recall the time when you learned

1 SCHWARZ

2 the office or doesn't appear or do something, that
3 he will in fact be terminated?

4 A. It is possible. I don't recall
5 specific instances, but it is very possible.

6 Q. Do you remember a transaction involving
7 a family or group called Davis in California?

8 A. Yes.

9 Q. Did there ever come a time where you
10 directed Mr. Bernstein to assist Bayrock in a
11 transaction with the Davis people or group or
12 family?

13 A. Yes.

14 Q. Was Mr. Bernstein, to your knowledge,
15 promised any additional compensation if he was
16 successful on behalf of Bayrock in doing whatever
17 Bayrock wanted to do with the Davis group?

18 MR. DOMB: Objection to the form. It
19 is passive, was he promised.

20 Are you asking if Mr. Schwarz promised
21 him or if he knows?

22 Q. Do you know if yourself or anybody else
23 on behalf of Bayrock made any representations to
24 Mr. Bernstein about his being entitled to get
25 additional compensation over and above his base

1 SCHWARZ

2 salary if he was successful in doing what Bayrock
3 asked him do?

4 A. Yes.

5 Q. What were the conversations?

6 A. I remember one conversation where I
7 sent him to California, told him if he came back
8 with signed documents, his bonus for that year
9 would be \$10,000.

10 Q. Would that be \$10,000 over and above
11 his normal year end bonus or that was going to be
12 his year end bonus?

13 A. It may have been over and above.

14 MR. FEINBERG: Let's mark this document
15 as Exhibit 21, an e-mail.

16 (Plaintiff's Exhibit 21, two e-mails,
17 one dated June 12, 2007 from Julius Schwarz to
18 Jody Kriss and Felix Sater, marked for
19 identification, as of this date.)

20 Q. This is two e-mails, one is June 12,
21 2007 from Julius Schwarz to Jody Kriss and Felix
22 Sater.

23 Is this the time frame you were talking
24 about, about his -- in June of 2007 with respect
25 to Davis?

1 SCHWARZ

2 A. It was to memorialize an option to
3 purchase. I don't remember the specific
4 circumstances surrounding it. That was in general
5 what it was about.

6 Q. Did Mr. Bernstein complete the second
7 task where he was promised a bonus?

8 A. No. I had to end up suing the Davises
9 and compelled arbitration and then settled the
10 matter myself in California, I think it was, or
11 maybe it was in Phoenix.

12 Q. You actually started an arbitration?

13 A. Yes.

14 Q. Who was the arbitration with?

15 A. Who was the arbitrator?

16 Q. No. Was it the American Arbitration
17 Association, a private arbitrator?

18 A. I think it was the American Arbitration
19 Association.

20 MR. FEINBERG: Mr. Oberlander is going
21 to continue with our questions at this point.

22 MR. DOMB: I won't stop him, but I
23 object to the switching back and forth
24 questioning --

25 MR. FEINBERG: Different topics.