

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK
ex rel. Qui Tam “The Bayrock Qui Tam Litigation Partnership,”

Plaintiff

- against -

Index No. 101478/2015

BAYROCK GROUP LLC; TEVFIK ARIF; JULIUS SCHWARZ;
FELIX SATER; BRIAN HALBERG; ALEX SALOMON; JERRY
WEINRICH, SALOMON & COMPANY PC; AKERMAN
SENTERFITT LLP; DUVAL & STACHENFELD LLP;
KRAMER LEVIN NAFTALIS AND FRANKEL LLP, BRUCE
STACHENFELD; NIXON PEABODY LLP; ADAM GILBERT;
ROBERTS & HOLLAND LLP; ELLIOT PISEM; BAYROCK
SPRING STREET LLC; BAYROCK WHITESTONE LLC;
BAYROCK CAMELBACK LLC; BAYROCK MERRIMAC
LLC; AND BAYROCK GROUP INC.;

ANSWER

Defendants.

Defendant, Felix Sater (“Sater” or “Defendant”), for his Answer to the *Qui Tam* Complaint (the “Complaint”), hereby alleges as follows:

INTRODUCTION

1. What lies beneath the phony Robin Hood veneer of this “*qui tam*” action is absolutely horrendous: a bogus billion-dollar extortion campaign against Bayrock and others by two rogue lawyers, Frederick Oberlander (“Oberlander”) and Richard Lerner (“Lerner”), who are currently under criminal investigation by the Department of Justice. It is no surprise that Oberlander confessed to being the only member of the illusory “Bayrock Qui Tam Litigation Partnership” (“Plaintiff”), and is someone whom a Federal Judge in a related case mockingly described as “some sort of self-appointed inspector general.” Lerner is Oberlander’s equally-delusional partner, who was forced to resign in disgrace from his partnership with the law firm of

Wilson Elser due to his continued association with Oberlander.¹ Clientless and on legal “skid row,” Oberlander and Lerner kicked-off this “*qui tam*” litigation by deliberately issuing a false press release claiming that the Attorney General’s Office “Green Lighted” this action, when actually the Attorney General’s Office expressly declined to do so.

2. From 2008 to 2015, Oberlander, Lerner, and their serial plaintiff, Jody Kriss (“Kriss”), waged a billion-dollar extortion campaign against Bayrock and others, bringing no less than five near-identical lawsuits against a cadre of lawyers, accountants, business professionals and firms associated with Bayrock. In addition to suing Bayrock and Sater, they even sued Donald Trump, Ivanka Trump, the United States Government, a former Federal Prosecutor who is now a New York State Senator, prestigious law firms including Nixon Peabody LLP, Satterlee Stephens Burke & Burke LLP, Duval & Stachenfeld LLP, Akerman Senterfitt LLP, and Roberts & Holland LLP, and major real estate companies CIM and iStar, for One Billion Dollars (\$1,000,000.00), threatening to expose their relationship with Bayrock and Sater. (Exhibit A). That lawsuit was dismissed with prejudice last year. Additionally, Oberlander and Lerner commenced two other litigations alleging those same frivolous Bayrock “fraud” claims. Each of those was dismissed with prejudice. In fact, Federal District Judge Lorna Schofield recently noted Oberlander’s:

“repeated defiance of court orders ... [and his] desires ... to foment litigation with the attendant burden on all litigants and the Court without any apparent desire to reach the merits.”

In related proceedings another Federal Judge described legal papers submitted by Oberlander and Lerner as “a comic book characterization of what legal papers are supposed to

¹ Wilson Elser was previously averse to Oberlander in a matter brought by and on behalf of Oberlander against the firm’s then-client, Gomi Investors. See North Alfred Street Ventures, LLC v. Gomi Investors, LLC, Case No. BC343821 (Los Angeles Co. Superior Ct., Central District 2005). In connection with that litigation, Oberlander was described by a Wilson Elser attorney as “an extortionist.” Neither Gomi Investors nor its principal, Tony Regan, ever waived that conflict.

look like.”

3. Oberlander and Lerner also unsuccessfully attempted to prevent the nomination of Loretta Lynch as United States Attorney General by publishing false articles accusing Loretta Lynch of collusion with Sater.

4. As part of their sleazy and potentially criminal litigation tactics, Kriss and Oberlander orchestrated the theft of a hard drive from Bayrock containing numerous attorney-client privileged and judicially-sealed documents, including a sealed government cooperation agreement. Then they attached certain of these sealed, extremely sensitive documents to a publicly-filed complaint, an act which a Federal Judge described as “very bad and perhaps despicable.” Later, in an act of criminal depravity, Oberlander and Lerner furnished the sealed government cooperation agreement to the lawyer for Daniel Persico, a reputed member of organized crime, which allegedly resulted in the assault of a Bayrock associate who had cooperated against Daniel Persico. Such appalling conduct, and worse, over the course of numerous related litigations caused Oberlander and Lerner to *twice* be referred by a Federal Judge to the Department of Justice for criminal investigation.

5. Oberlander and Lerner’s bizarre *qui tam* Complaint (Dkt. No. 1) is an identical re-tread of Kriss, Oberlander and Lerner’s 2010 complaint against these same defendants, a complaint that was described by a Federal Judge as “frankly incomprehensible” and ordered over 400 paragraphs stricken, gutting substantially all of the its claims.² That 2010 lawsuit, like this “*qui tam*” lawsuit, was a straight-up extortion, wherein Kriss, Oberlander and Lerner brazenly sought to shake down these same defendants due to their relationship with Bayrock and Sater. Oberlander

² Federal Magistrate Judge Maas of the Southern District of New York struck over 400 paragraphs of Oberlander’s 2010 complaint (the same as contained in the *qui tam* complaint) because Oberlander could not demonstrate, after several years of opportunities to do so, that the allegations were not “improperly based on purloined [privileged and confidential] information.”

made clear that money from deep-pocketed defendants was the only thing that would prevent him from disseminating court sealed information concerning Sater's government cooperation. Oberlander even put their extortive demands in writing, stating, in a letter to Bayrock's counsel:

The only way to prevent worldwide notoriety [would] be a globally stipulated sealed confidentiality order accompanying a global settlement... Start working the phones... They simply demand for what they are entitled to: **one billion dimes.**"

If I can't settle this in time now, you will have brought this about by your decisions, taking the **tactical nuclear device** I filed in SDNY and enhancing it beyond what even I could have, **magnifying its yield to that of a strategic thermonuclear weapon**... If I see letters, motions, or anything else, I will instruct counsel to seek emergency relief. And I'll get it. And you'll get the inevitable, concomitant global public news and media coverage of everything everywhere... You need my help. Take it. Fast. Or Judge Buchwald will be presiding over **World War III** with coverage likely on the front page of the New York Law Journal.

6. In each of their baseless extortive lawsuits, including the instant "*qui tam*" action, Kriss, Oberlander and Lerner maintain an untenable tack: suing Bayrock, Kriss's former company, over an alleged financial tax fraud that only Kriss, as CFO and Finance Director at Bayrock, could have committed. Indeed, as alleged in a related lawsuit against him, Kriss used to brag that, "he could steal more money using his Wharton degree than one hundred gangsters combined." If the *qui tam* allegations are true, that is exactly what Jody Kriss did.

AS TO "THE NATURE OF THIS ACTION"

7. Defendant Sater denies the allegations in paragraphs 1-3 of the Complaint.

AS TO "JURISDICTION AND VENUE"

8. No response is required to the allegations in paragraphs 4-6 of the Complaint as they call for legal conclusions. To the extent a response is required, Defendant Sater denies such allegations, except admits that he transacts business in New York County.

AS TO "SPECIAL CONSIDERATIONS IN THIS QUI TAM ACTION"

9. No response is required to the allegations in paragraph 7 of the Complaint as they call for legal conclusions. To the extent a response is required, Defendant Sater denies such allegations.

10. No response is required to the allegations in paragraphs 8-10 of the Complaint as they call for legal conclusions and contain hypotheticals. To the extent a response is required, Defendant Sater denies such allegations.

11. With respect to paragraph 11, Defendant Sater admits that a six-year-old, 197-page complaint is attached to the *qui tam* Complaint. Defendant Sater denies knowledge or information as to the status of that document in Israel and denies the allegations therein.

12. To the extent a response is required to paragraph 12, Defendant Sater denies such allegations and respectfully refers the Court to Kriss v. Bayrock, 10 Civ. 3959 (SDNY) (LGS).

AS TO “INTRODUCTORY ALLEGATIONS”

13. Defendant Sater denies the allegations in paragraphs 13-20 of the Complaint.

14. Defendant Sater denies knowledge of information sufficient to form a belief as to the allegations in paragraphs 21-22 of the Complaint, and on that basis, denies said allegations.

AS TO “THE CAYRE FRAUD”

15. Defendant Sater denies the allegations in paragraphs 23-36 of the Complaint.

AS TO “THE THIERIOT FRAUD”

16. Defendant Sater denies the allegations in paragraphs 37-44 of the Complaint.

AS TO “SATER FRAUDS”

17. Defendant Sater denies the allegations in paragraphs 45-54 of the Complaint.

AS TO “THE FL FRAUDS”

18. Defendant Sater denies the allegations in paragraphs 55-64 of the Complaint.

AS TO “PRAYER FOR RELIEF”

19. No response is required to the allegation in paragraphs 65-66 of the Complaint as they call for a legal conclusions. To the extent a response is required, Defendant Sater denies such allegations.

20. Defendant Sater denies the allegations contained in the “Wherefore” clause and paragraphs 67-68, and avers that Plaintiff is not entitled to any of the relief requested.

AFFIRMATIVE DEFENSES

First Affirmative Defense

21. The Complaint fails to state a claim upon which relief can be granted.

Second Affirmative Defense

22. Any alleged injuries suffered by Plaintiff resulted from acts or omissions of persons and/or entities other than Defendant Sater, namely Jody Kriss.

Third Affirmative Defense

23. This Court lacks jurisdiction over the person and/or subject matter of this action, and Sater reserves the right to move for dismissal of the Complaint.

Fourth Affirmative Defense

24. Plaintiff’s claims are barred by the doctrines of *res judicata*, unclean hands, equitable estoppel and/or collateral estoppel.

Fifth Affirmative Defense

25. Plaintiff’s claims are barred by the applicable statutes of limitations.

Sixth Affirmative Defense

26. Plaintiff’s claims have not been pleaded with sufficient particularity.

Seventh Affirmative Defense

27. Plaintiff lacks standing.

Eighth Affirmative Defense

28. Plaintiff's claims are barred by laches.

Ninth Affirmative Defense

29. Plaintiff has failed to properly serve defendant(s) with the Summons and Complaint.

Tenth Affirmative Defense

30. Plaintiff's claims are barred by the doctrine of unclean hands.

Eleventh Affirmative Defense

31. Persons or entities other than Sater, namely Jody Kriss, were responsible or at fault for any damages incurred as a result of events described in the Complaint (which damages are denied), and therefore, in the event of any determination of liability in favor of any party against Sater, an apportionment of responsibility and fault as to all other persons and entities must be made.

Dated: New York, New York
October 10, 2016

MOSES & SINGER LLP
Attorneys for Defendant Felix Sater

By: /S/

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