

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 -

BAYROCK GROUP LLC; TEVFIK ARIF; JULIUS SCHWARZ;
FELIX SATER; BRIAN HALBERG; ALEX SALOMON; JERRY
WEINRICH, SALOMON & COMPANY PC; AKERMAN
SENERFITT 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.,

Defendants.

Index No. 101478/2015

**THIRD-PARTY
SUMMONS**

FELIX SATER,

Third-Party Plaintiff,

-against-

JODY KRISS,

Third-Party Defendant.

To the above named Third-Party Defendant:

YOU ARE HEREBY SUMMONED to answer the Complaint of the Third-Party Plaintiff and of the Plaintiff, and to serve a copy of your answer upon the undersigned attorneys for the Third-Party Plaintiff, MOSES & SINGER LLP, whose address is 405 Lexington Avenue, 12th Floor, New York, New York 10174, within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to timely appear or answer, judgment will be taken against you by default for the relief demanded herein by the Plaintiff.

Dated: New York, New York
October 10, 2016

MOSES & SINGER LLP
Attorneys for Third-Party Plaintiff

By: _____/S/_____

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**THIRD-PARTY
COMPLAINT**

Felix Sater (“Sater”), for his Third-Party Complaint against Jody Kriss (“Kriss”), hereby alleges as follows:

INTRODUCTION

1. What lies beneath the phony Robin Hood veneer of this “*qui tam*” action is absolutely horrendous: two rogue lawyers, Frederick Oberlander (“Oberlander”) and Richard Lerner (“Lerner”), currently under criminal investigation by the Department of Justice, implicating their former client Jody Kriss, ex-CFO and Finance Director of defendant Bayrock Group, by putting him at the center of their bizarre, bogus claims of a \$250 Million tax fraud in their *qui tam* Complaint that names Donald Trump and his kids, amongst others. (Exhibit A). If any tax fraud

occurred, it could only have been committed by Kriss, as Bayrock's Head of Finance, and has nothing to do with the Trumps nor any of the named defendants in the *qui tam* Complaint. 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 Kriss fired Oberlander and Lerner in March of 2015, mere months before the instant action was commenced. Without a client, Oberlander and Lerner kicked-off their "*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, Kriss, Oberlander and Lerner 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 B). That lawsuit was dismissed with prejudice last

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.

year. Additionally, Oberlander and Lerner commenced two other litigations alleging these same frivolous Bayrock fraud claims. Both were with prejudice. 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.

3. 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.

4. In March of 2015, with all of his lawsuits against Bayrock either dismissed or on the brink of dismissal, Kriss terminated Oberlander and Lerner. Clientless and on legal “skid row,” Oberlander and Lerner devised another scheme to extort Bayrock and the other defendants without the need for a client: The *qui tam* Complaint. Oberlander and Lerner’s *qui tam* Complaint is an identical re-tread of Kriss, Oberlander and Lerner’s 2010 court complaint filed 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

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)

5. Their 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 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 extortive lawsuits, including the instant “*qui tam*” action, Kriss, Oberlander and Lerner maintained 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.

FACTS

7. This case is a continuation of a multi-year, billion-dollar shakedown of the defendants by Kriss and his recently-fired attorneys, Oberlander and Lerner. At all relevant times,

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.”

Jody Kriss was the CFO and Finance Director of Bayrock and his father, attorney Ronald Kriss from Akerman Senterfitt, was Bayrock's outside general counsel. Jody Kriss was appointed CFO and Finance Director for Bayrock at the insistence and encouragement of his father. As CFO and Finance Director, Jody Kriss managed and controlled all of Bayrock's finances, loans, and relationships with lenders, including the deal structures alleged in this *qui tam* Complaint.

8. When Kriss became unsatisfied with the millions he made at Bayrock, he teamed up with rogue lawyers Oberlander and Lerner to orchestrate a shake-down. Together, they used illicit tactics to manufacture a case against Bayrock, including (i) Kriss wearing a wire and secretly recording his confidential conversations with other Bayrock executives; (ii) destroying evidence, by which Kriss deleted all of his and his father's e-mails, which would have demonstrated his control and management of the deal structures alleged in this *qui tam* Complaint; and (iii) bribing an ex-Bayrock employee for access to a stolen hard drive belonging to Bayrock and Sater. Accordingly, it is no surprise that Kriss's nickname at Bayrock was "VOR-TON," a word play on Wharton, the school he attended, and the Russian "vor-in-law," or "thief-in-law," as Russian mobsters are known, a nickname that Kriss relished.

10. As a pressure tactic to score a settlement, Kriss, Oberlander and Lerner threatened to disclose, "with clockwork inevitability," the documents stolen from the Bayrock hard drive, certain of which concerned Sater's high-level government cooperation, including significant matters of National Security. Kriss, Oberlander and Lerner knew that public dissemination of the extremely sensitive Bayrock files would expose Sater and other Bayrock employees to danger, a fact confirmed by multiple courts including the United States Court of Appeals for the Second Circuit. Indeed, that was the point.

11. When a series of extortive letters failed to achieve a settlement, Kriss, Oberlander and Lerner furnished the sealed government cooperation agreement, obtained from the stolen

Bayrock hard drive, 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.

12. Kriss, Oberlander and Lerner then brazenly disclosed stolen, confidential and privileged information to *The Daily Beast*, *The New York Times*, *The Miami Herald*, and the *New York Law Journal*. Undeterred by admonitions from numerous courts, they forged ahead, filing more lawsuits in which they further exposed information obtained from the stolen Bayrock hard drive. The Second Circuit Court of Appeals recognized that such information was “of dubious utility in the civil case except as a tool to intimidate and harass.” As a result of their dirty litigation tactics, Judge Cogan of the Eastern District of New York *twice* referred Oberlander and Lerner to the Department of Justice for criminal investigation, first on February 27, 2012, and again on June 30, 2015. They remain under criminal investigation.

13. If any financial tax fraud occurred at Bayrock, it could only have been committed by Jody Kriss, its former CFO and Finance Director, and no one else. If “the People of the State of New York” were in fact ripped off, as the *qui tam* Complaint asserts, it could only have been Jody Kriss who orchestrated that rip-off.

FIRST CLAIM – INDEMNIFICATION

14. Sater repeats and realleges the foregoing allegations of this Third-Party Complaint.

15. If, as alleged in the *qui tam* Complaint, Sater is found to be liable to Plaintiff, the fraudulent and otherwise culpable actions of Kriss entirely caused and solely contributed to Sater’s liability.

16. In the event that Plaintiff is granted any award against Sater, then by reason of the fraudulent and otherwise culpable conduct of Kriss, the CFO and Finance Director at Bayrock, Sater is entitled to complete indemnification from Kriss for all of the costs and expenses, including attorney’s fees, that have been and will be incurred by Sater in connection with defending this

action, prosecuting this third-party action, and for the amount of any judgment entered against Sater in favor of Plaintiff, and/or any amount paid by Sater to settle the claims asserted by Plaintiff.

17. If, as alleged in the *qui tam* Complaint, Sater is found to be liable to Plaintiff, the fraudulent actions of Kriss caused Sater to be sued by the Plaintiff in this action, and caused Sater to incur costs and expenses, including attorney's fees, in defending himself in this action, and in prosecuting this action against Kriss, for which Sater is entitled to complete indemnification from Kriss.

SECOND CLAIM – CONTRIBUTION

18. Sater repeats and realleges the foregoing allegations of this Third-Party Complaint.

19. If, as alleged in the *qui tam* Complaint, Sater is found to have committed tax fraud and is therefore liable to Plaintiff, the fraudulent or otherwise culpable conduct of Kriss, as CFO and Finance Director for Bayrock, completely caused and contributed to Sater's liability to Plaintiff.

20. In the event Plaintiff is granted any award against Sater, then by reason of the fraudulent or otherwise culpable conduct by Kriss, Sater is entitled to contribution from Kriss for all costs and expenses incurred by Sater in connection with defending the first party action, prosecuting this third party action, and for any judgment entered against Sater and/or the amount paid by Sater to settle the claims asserted by Plaintiff.

WHEREFORE, Sater demands monetary judgments in his favor against Kriss:

- On the First Claim, against Kriss in the amount of any verdict or judgment entered against Sater in the first party action, or in an amount equal to the excess over and above Sater's equitable share of the judgment, and for the costs and attorneys fees incurred in defending the claims asserted against Sater in the main action, and in prosecuting this third-party action;

- On the Second Claim, against Kriss in the amount of any verdict or judgment entered against Sater in the first party action and for the costs and attorney's fees incurred in defending the claims asserted against Sater in the main action, and in prosecuting this third-party action;
- Plus such other and further relief as the Court deems just.

Dated: New York, New York
October 10, 2016

MOSES & SINGER LLP
Attorneys for Defendant Felix Sater

By: _____/S/_____

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