

*JOSHUA BERNSTEIN VS.
BAYROCK GROUP LLC*

*FELIX H. SATER
March 9, 2010*



126 East 56th Street, Fifth Floor New York, New York 10022

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Min-U-Script® with Word Index

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1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF WESTCHESTER
 3 -----x
 4 JOSHUA BERNSTEIN,
 5
 6 Plaintiff,
 7
 8 -against-
 9 BAYROCK GROUP LLC,
 10
 11 Defendant.
 12
 13 Index No. 02579/09
 14 -----x
 15
 16 11 Martine Avenue
 17 White Plains, New York
 18
 19 March 9, 2010
 20 4:10 p.m.
 21
 22 Deposition of FELIX H. SATER, held
 23 at the Law Offices of Gerry E. Feinberg, pursuant
 24 to subpoena and court order, before Barbara
 25 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: 92879B

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1 A P P E A R A N C E S:
 2
 3 GERRY E. FEINBERG, ESQ.
 4 Attorney for Plaintiff
 5 11 Martine Avenue
 6 White Plains, New York 10606-0134
 7 and
 8 FREDERICK M. OBERLANDER, ESQ.
 9 28 Sycamore Lane
 10 PO Box 1870
 11 Montauk, New York 11954
 12
 13 AKERMAN SENTERFITT LLP
 14 Attorneys for Defendant
 15 335 Madison Avenue, Suite 2600
 16 New York, New York 10017-4636
 17 BY: MARTIN DOMB, ESQ.
 18
 19 ALSO PRESENT:
 20 Joshua Bernstein
 21 Brian Halberg, Esq.
 22 Julius R. Schwarz
 23
 24
 25

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1 ----- I N D E X -----
 2 WITNESS EXAMINATION PAGE
 3 FELIX H. SATER MR. FEINBERG 4
 4 MR. OBERLANDER 54
 5 MR. DOMB 67
 6
 7
 8 ----- E X H I B I T S -----
 9 PLAINTIFF'S DESCRIPTION FOR I.D.
 10 Exhibit 32 E-mail from Mr. Bernstein 36
 11 to you, September of 2007
 12 Exhibit 33 E-mail to Maria Simonchyk, 48
 13 September 9, 2008
 14 Exhibit 34 Compilation of two e-mails, 50
 15 March 19, 2008
 16 Exhibit 35 E-mail 51
 17 Exhibit 36 E-mail, September 16 52
 18 Exhibit 37 August 29, 2003 letter 55
 19 addressed to Jody Kris
 20 Exhibit 38 Presentation binder for FL 59
 21
 22
 23
 24
 25

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1 S T I P U L A T I O N S
 2
 3 IT IS HEREBY STIPULATED AND AGREED, by
 4 and between the attorneys for the respective
 5 parties herein, that filing and sealing be and the
 6 same are hereby waived.
 7
 8 IT IS FURTHER STIPULATED AND AGREED
 9 that all objections, except as to the form of the
 10 question, shall be reserved to the time
 11 of the trial.
 12
 13 IT IS FURTHER STIPULATED AND AGREED
 14 that the within deposition may be signed and sworn
 15 to before any officer authorized to administer an
 16 oath, with the same force and effect as if signed
 17 and sworn to before the officer before whom the
 18 within deposition was taken.
 19
 20
 21
 22
 23
 24
 25

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1 FELIX H. SATER,
 2 called as a witness, having been first
 3 duly sworn by the Notary Public (Barbara
 4 Driscoll), was examined and testified as
 5 follows:
 6 EXAMINATION BY
 7 **MR. FEINBERG:**
 8 Q. Please state your name.
 9 **A. Felix Sater.**
 10 Q. Would you state your address.
 11 **A. 130 Shore Road, Port Washington, New**
 12 **York 11050.**
 13 Q. My name is Gary Feinberg --
 14 **A. How are you, Mr. Feinberg?**
 15 Q. Sorry to keep you waiting all day
 16 today.
 17 **A. I am more upset about the other thing.**
 18 **MR. DOMB:** You're noting the time that
 19 we started this deposition?
 20 **THE WITNESS:** It is 10 after four.
 21 Q. I am asking you a series of questions.
 22 If you don't understand any question, please let
 23 me know and I will try to rephrase it for you.
 24 Is Mr. Domb acting as your attorney
 25 here today?

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1 SATER
 2 **A. Yes.**
 3 Q. If there is a question posed to you,
 4 please try to answer the question before -- you
 5 cannot have a conversation with him before you at
 6 least attempt to answer the question --
 7 **A. I can't have a conversation until I**
 8 **attempted --**
 9 Q. If the question is posed to you, answer
 10 the question. If there is no question posed to
 11 you, you can have a conversation with him. He
 12 will make whatever objections he feels are
 13 warranted.
 14 Answer verbally for the reporter
 15 because she can't take down moving your head.
 16 **A. Understood.**
 17 Q. First question, are you on any
 18 medication or is there any other reason that you
 19 can't be testifying truthfully today?
 20 **A. No.**
 21 Q. Tell me what your educational
 22 background is.
 23 **A. I have some college.**
 24 Q. Where did you go to college?
 25 **A. Kingsborough Community College and Pace**

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1 **SATER**
 2 **University.**
 3 Q. How far did you go?
 4 **A. A year or two in both.**
 5 Q. When did you go to college?
 6 When did you finish whatever you were
 7 doing in college?
 8 **A. 1983, 1984, I am guessing.**
 9 Q. After finishing that schooling, did you
 10 become employed?
 11 **A. Yes.**
 12 Q. Who did you become employed with?
 13 **A. Bear Stearns.**
 14 Q. What did you do for Bear Stearns?
 15 **A. I started as assistant cold caller --**
 16 **as a cold caller.**
 17 Q. Did you have any licenses?
 18 **A. No.**
 19 Q. You had no license when you started.
 20 Did there ever come a time when you
 21 obtained a license?
 22 **A. Yes.**
 23 Q. What license did you obtain?
 24 **A. I obtained a series 7 and a series 63.**
 25 Q. When were those obtained?

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1 SATER
 2 **A. Sometime between six to 12 months after**
 3 **starting my employment at Bear Stearns.**
 4 Q. How long did your employment continue?
 5 **A. I changed jobs maybe -- I don't know.**
 6 **I don't remember the dates. I changed jobs within**
 7 **the year and went to work at a firm, Lattenberg**
 8 **Thalman. I stayed there for a while and then went**
 9 **over to Lehman Brothers; stayed at Lehman Brothers**
 10 **for a while; don't remember the extent or the**
 11 **exact length of the time.**
 12 **Then went to work for a company called**
 13 **Gruntal; spent a number of years there. Then went**
 14 **to work for Shearson Lehman Brothers. That takes**
 15 **us into probably 1994, I would guess.**
 16 Q. Did there come a time when you exited
 17 the securities business?
 18 **A. Yes.**
 19 Q. When was that?
 20 **A. I am guessing 1994, 1995.**
 21 Q. Was there a reason why you exited the
 22 securities business?
 23 **A. Yes. I went into a different business.**
 24 Q. What business did you go into?
 25 **A. I was trying to do some work in Russia,**

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1 SATER
 2 **telecommunications work.**
 3 Q. Were you ever convicted of a crime?
 4 **A. Yes.**
 5 Q. What was the crime you were convicted
 6 of?
 7 **A. I was convicted of assault one.**
 8 Q. Were you ever convicted of any other
 9 crimes?
 10 **A. On the advice of counsel, I am not**
 11 **going to answer that question as I don't have to**
 12 **incriminate myself nor does this business**
 13 **litigation have anything to do or bearing on**
 14 **whether I am convicted of any crimes or not.**
 15 **On the advice of counsel, I won't**
 16 **answer past what I have already answered.**
 17 Q. You already answered you were convicted
 18 of assault?
 19 **A. Yes.**
 20 Q. If you have actually been convicted,
 21 the fact that you have been convicted cannot
 22 constitute any testimony against your own
 23 interests and goes to your credibility depending
 24 upon what the nature of the conviction was and if
 25 it goes to a conviction related to something

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1 SATER
 2 related to any sort of fraud, et cetera, it is
 3 relevant to your credibility as a witness in this
 4 case.
 5 **A. Probably not a very credible witness to**
 6 **begin with.**
 7 Q. You're probably not a very credible
 8 witness --
 9 **A. No. That is what you're saying, so --**
 10 Q. No. I am asking you that. Are you
 11 refusing to answer the question --
 12 **A. On the advice of counsel.**
 13 Q. Is that your direction to him?
 14 **A. He is not my counsel on this particular**
 15 **matter. My counsel is Leslie Caldwell from Morgan**
 16 **Lewis.**
 17 Q. Is that criminal counsel?
 18 **A. She is many things.**
 19 Q. Is she here today?
 20 **A. No.**
 21 Q. Did she know you would be asked this
 22 question?
 23 **A. Yes.**
 24 Q. Did she advise you not to answer this
 25 question?

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1 SATER
 2 **A. Yes.**
 3 Q. The grounds being again?
 4 **A. Not to incriminate myself and -- on**
 5 **this issue and that I don't have to answer since**
 6 **my convictions have -- or lack thereof have**
 7 **nothing to do with what I am going to be**
 8 **questioned about here.**
 9 **MR. FEINBERG:** They are. I will take a
 10 two-minute break. I will get a phone number
 11 for the judge and we will call the judge's
 12 chambers right now --
 13 **THE WITNESS:** She will have an ex-parte
 14 hearing with the judge --
 15 **MR. FEINBERG:** Off the record.
 16 (Off the record discussion.)
 17 Q. We will make application to the judge.
 18 You will have your counsel come back at the
 19 appropriate time. You understand that you're here
 20 pursuant to a direction of the court to answer
 21 questions.
 22 **A. Absolutely. I would never, ever --**
 23 **MR. DOMB:** Don't interrupt. Ask him a
 24 question.
 25 Q. You understand that --

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1 SATER
 2 **A. Yes.**
 3 Q. You understand the direction is to come
 4 here under subpoena and court order to give
 5 testimony in this case. You understand that?
 6 **A. Yes.**
 7 Q. We will proceed from there.
 8 Could you tell me, were you ever
 9 employed by a company called Bayrock?
 10 **A. Yes.**
 11 Q. Are you still employed by Bayrock?
 12 **A. No.**
 13 Q. When did your employment cease?
 14 **A. About two years ago.**
 15 Q. What was your position while at
 16 Bayrock?
 17 **A. Different. It was different monickers**
 18 **attached to it. Managing member, managing**
 19 **something, managing -- you know what, it was**
 20 **basic -- bottom line, I was probably number two**
 21 **man in the company. The actual position, I don't**
 22 **remember what it was. I had a few business cards.**
 23 Q. When did you start?
 24 **A. I guess in 2001, 2002, sometime around**
 25 **there.**