

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,

v.

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

Defendants.

Index No. 101478/15

IAS Part 45  
Justice Anil C. Singh

Motion Sequence No. 4

Oral Argument Requested

**DEFENDANTS' JOINT MEMORANDUM OF LAW IN SUPPORT OF  
THEIR MOTION TO DISMISS THE COMPLAINT AND FOR OTHER RELIEF**

employment compensation. In 2008, Oberlander first represented Kriss in an action in Delaware Chancery Court.<sup>3</sup> Oberlander claimed that Bayrock had failed to pay certain compensation due Kriss. Holding that Kriss was bound by the arbitration provision in his employment agreement, the court dismissed the action. (Order Dismissing Delaware Action, Saurack Affirmation Ex. 2.)

**B. Oberlander Takes Thousands of Documents He Knows Were Misappropriated From Bayrock**

To avoid arbitration, Oberlander set out to greatly expand the claims against Bayrock. After learning that Joshua Bernstein, a former Bayrock employee, had stolen a hard drive and numerous physical files from Bayrock when his employment ended, Oberlander convinced Bernstein to share that information with him. (Affidavit of Joshua Bernstein, ¶¶ 11-15, Saurack Affirmation Ex. 3.)

In a proceeding Bayrock brought against Bernstein for his theft, Bernstein admitted that while employed by Bayrock he stole approximately 175,000 physical and electronic documents. (Bernstein Aff. ¶¶ 3-8). These included the e-mail boxes of Julius Schwarz, Bayrock's General Counsel, and Felix Sater, a Bayrock executive, and contained privileged, confidential and sensitive proprietary information of Bayrock and its employees, including sealed documents concerning Felix Sater's highly confidential cooperation as a witness in a federal criminal prosecution in the Eastern District of New York (the "Eastern District Action") following his criminal conviction for securities fraud. (*Id.* ¶ 4-6.)

As Bernstein related, one night in February 2010, Oberlander came to his apartment and spent several hours searching the documents Bernstein had stolen. (*Id.* ¶ 21.) Among the searches that Bernstein recalled Oberlander performing were for law firms that had represented

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<sup>3</sup> *Kriss v. Bayrock Group LLC*, Civ No. 4154-VCS (2008). (Affirmation of Walter Saurack (the "Saurack Affirmation") Ex. 1 (Delaware Complaint).).