

DISPUTE PREVENTION & RESOLUTION, INC.

STATE OF HAWAII

---:---

NAVATEK CAPITAL, INC.,	)	DPR No. 21-0234-A
individually and	)	
derivatively on behalf of	)	
Nominal Respondent MARTIN	)	
DEFENSE GROUP, LLC, fka	)	
NAVATEK LLC,	)	
	)	
Claimant,	)	
	)	
vs.	)	
	)	
MARTIN KAO; JOHN DOES 1-10;	)	
JANE DOES 1-10; DOE	)	
PARTNERSHIPS 1-5; DOE	)	
CORPORATIONS 1-10; DOE	)	
ENTITIES 1-10; and DOE	)	
GOVERNMENTAL UNITS 1-10,	)	
	)	
Respondents,	)	
	)	
and	)	
	)	
MARTIN DEFENSE GROUP, LLC,	)	
fka NAVATEK LLC.	)	
	)	
Nominal	)	
Respondent.	)	
	)	

VIDEO CONFERENCE ARBITRATION

Volume 2

Taken with Zoom Video Conferencing, commencing at
8:30 a.m. on September 28, 2021 pursuant to Notice.

EXHIBIT "A"

WILLIAM T. BARTON, RPR, CSR NO. 391

1 APPEARANCES:

2 The Arbitrator
 3 JERRY M. HIATT, ESQ.
 (appearing by video conference)
 4 c/o Dispute Prevention & Resolution
 1003 Bishop Street
 5 Pauahi Tower, Suite 1155
 Honolulu, Hawaii 96813
 (808) 523-1234
 6 jh@hiattlaw.com
 kellybryant@dphawaii.com
 7
 8 For Claimant/Counterclaim Respondent
 Navatek Capital, Inc., individually and
 derivatively on behalf of Nominal Respondent
 9 Martin Defense Group, LLC, fka Navatek LLC
 DAVID M. LOUIE, ESQ.
 10 JESSE W. SCHIEL, ESQ.
 RYAN DAVID LOUIE, ESQ.
 (appearing by video conference)
 11 Kobayashi, Sugita & Goda, LLP
 First Hawaiian Center
 12 999 Bishop Street, Suite 2600
 Honolulu, Hawaii 96813
 (808) 535-5700
 14 dml@ksglaw.com
 jws@ksglaw.com
 15 rnm@ksglaw.com
 rdl@ksglaw.com
 16
 17 For Respondent/Crossclaim Respondent
 Martin Kao
 ALLISON A. ITO, ESQ.
 (appearing by video conference)
 18 Choi & Ito
 700 Bishop Street, Suite 1107
 Honolulu, Hawaii 96813
 (808) 533-1877
 20 aito@hibklaw.com
 21
 KEITH M. KIUCHI, ESQ.
 (appearing by video conference)
 22 American Savings Bank Tower
 1001 Bishop Street, Suite 985
 Honolulu, Hawaii 96813
 (808) 533-2230
 24 kkiuchi106@cs.com
 25

1 MICHEL A. OKAZAKI, ESQ.
 (appearing by video conference)
 2 370 Kawaihae Street, Apt. E
 Honolulu, Hawaii 96825
 (808) 222-1859
 3 mikeokazaki@hawaii.rr.com
 4
 For Martin Defense Group, LLC, fka Navatek LLC
 5 DOUGLAS S. CHIN, ESQ.
 PETER STARN, ESQ.
 6 ERIC S. ROBINSON, ESQ.
 ROBERT J. BROWN, ESQ.
 (appearing by video conference)
 7 Starn O'Toole Marcus & Fisher
 1900 Makai Tower
 Pacific Guardian Center
 8 733 Bishop Street
 Honolulu, Hawaii 96813
 (808) 537-6100
 10 dchin@starnlaw.com
 pstarn@starnlaw.com
 11 erobinson@starnlaw.com
 rbrown@starnlaw.com
 12 Also Present (appearing by video conference)
 Daniel Brunk
 14 Steven Loui
 Martin Kao
 Tom Simon
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 INDEX

2 EXAMINATION

3 Witness Name	Page
4 STEVEN SHAW	
5 CROSS BY MR. KIUCHI	239
6 REDIRECT BY MR. SCHIEL	287
7 REDIRECT BY MR. ROBINSON	309
8 RECROSS BY MR. KIUCHI	315
9 BY THE ARBITRATOR	323
10 TOM SIMON	
11 CROSS BY MR. KIUCHI	327
12 REDIRECT BY MR. LOUIE	388
13 REDIRECT BY MR. ROBINSON	444
14 RECROSS BY MR. KIUCHI	459
15 FURTHER BY MR. LOUIE	477
16 FURTHER BY MR. KIUCHI	480

1 THE ARBITRATOR: Can everybody state their
 2 appearances starting with NCI.

3 MR. SCHIEL: Good morning, Jerry. On behalf
 4 of NCI Jesse Schiel. David Louie is also in the
 5 room, Ryan Louie, and our client Steven Loui and of
 6 course our witness today, Steven Shaw.

7 THE ARBITRATOR: I'm curious. Is Ryan
 8 related to Steven or to David? Or either?

9 MR. SCHIEL: He's David's son.

10 THE ARBITRATOR: Nice to see you, Ryan. I
 11 hope you can get your dad over the tough spots in
 12 this case. He probably could use all the help you
 13 can give him. All right, then can we have
 14 appearances from Doug, please.

15 MR. ROBINSON: Eric Robinson appearing on
 16 behalf of Martin Defense Group, LLC. I'm joined by
 17 Mr. Doug Chin, Dan Brunk and expect to be joined
 18 throughout the day by Peter Starn and Robert Brown.

19 THE ARBITRATOR: Then, Keith, please for
 20 your side?

21 MR. KIUCHI: Keith Kiuchi, Allison Ito and
 22 Mike Okazaki representing Martin Kao. Martin Kao is
 23 also on the screen.

24 THE ARBITRATOR: Thank you for joining us on
 25 the screen, Mr. Kao. Who is your next witness, Eric?

Page 399

1 Q. And with regard to Exhibit 129 where they
2 are talking about max 3.5 million loan without
3 looking like we are cooking anything, did you review
4 a number of emails by and between Mr. Kahele Lum Kee,
5 Mr. Cliff Chen and Mr. Kao?

6 A. Yes. Mr. Kao was usually CC'd on emails
7 like that.

8 Q. Did it appear that Mr. Kao was in frequent
9 contact by email with Mr. Lum Kee and Mr. Chen as to
10 this PPP loan application?

11 A. Yes, these three were sharing a brain
12 throughout this entire process as far as getting
13 these loans done.

14 Q. Got it. Let's now turn to Exhibit 130.
15 (Screensharing a document.)

16 Q. So Exhibit 130, going down to the bottom,
17 this is about the payroll costs. And Mr. Lum Kee is
18 emailing. April 2nd, again, before the application
19 is actually submitted.

20 And he's emailing to Mr. Kao, see attached
21 inclusive of the new office pool costs. Did you see
22 this, sir?

23 A. I did, yes.

24 Q. All right. Then going up. This is from
25 Mr. Kao on April 2, 2020 at pretty late in the day,

Page 401

1 Q. And Exhibit 40 is, we start with
2 Mr. Schmicker. And this is later. This is
3 April 8th. This is after the application has gone
4 in.

5 Mr. Schmicker is asking if they filed for
6 the SBA money. Do you see that?

7 A. Yes. That's what it says.

8 Q. Then we go up, and then what is Mr. Kao's
9 response to Mr. Schmicker?

10 A. "Sounds sketchy. Best to stick to our
11 standard practices of raping and pillaging."

12 Q. And then, Mr. Schmicker responds. Just
13 going up he talks about it's free money under some
14 simple conditions. Then go up. What does Mr. Kao
15 say?

16 A. "Our payroll is already funded by the
17 federal government. This would be double-dipping. I
18 would need at least two cups."

19 Q. This is on April 8th. This is while the PPP
20 loan at CPB is still pending.

21 What did you take these emails to mean,
22 Mr. Simon?

23 A. It's interesting a lot of defense contracts
24 basically bill the government for the payroll of the
25 people who are working the job, like a cost plus

Page 400

1 24:30 p.m. The attachment says, copy of summary of
2 payroll costs 1219 MK edits XLSX. What does that
3 normally mean to you?

4 A. It looks like the, there was an Excel
5 spreadsheet that at some point was edited by Martin
6 Kao to reflect new information that Mr. Kao wanted in
7 that spreadsheet.

8 Q. Okay. Let's move on to Exhibit 132.
9 Exhibit 132 is an email, at the bottom, yes, from
10 Mr. Lum Kee to Mr. Kao.

11 (Screensharing a document.)

12 Q. It says, "Roger will finalize the PPP loan
13 application today and upload this along with the
14 941s."

15 Do you see that?

16 A. Yes, sir.

17 Q. Then Mr. Kao's response was "chance'm"?

18 A. Yes. My understanding is that's kind of a
19 local, pijin local term in Hawaii for let's take a
20 chance, let's roll the dice, let's see how this goes.

21 Q. Got it.

22 THE ARBITRATOR: That exhibit number was?
23 MR. LOUIE: 132.

24 Q. Now, let's go to number Exhibit 40.
25 (Screensharing a document.)

Page 402

1 contract.

2 And so, what Mr. Kao seems to be saying here
3 is interesting, and I didn't catch this the first
4 time. Is that the he may not have been eligible for
5 this PPP loan at all since the federal government is
6 funding the payroll there is no real risk to Navatek.

7 And it wasn't like Navatek needed to dip
8 into their cash reserves to cover the payroll during
9 the difficult time because the federal government was
10 already doing that.

11 That's sort of the way I looked at it. Then
12 he basically is saying because the federal government
13 is covering the payroll as per their contract as a
14 defense contractor and they are applying for a PPP
15 loan to cover the same expenses that it would be
16 double-dipping.

17 And Mr. Kao seems very comfortable with
18 that.

19 Q. All right. Then let me ask you to turn,
20 that was Exhibit 40. Dated April 8th.

21 Then let me ask you to turn to Exhibit 143.
22 (Screensharing a document.)

23 Q. Go all the way to the bottom. First email.
24 This is -- I'm not sure what this is. Let's go up
25 above that to Mr. Kao.

Page 403

1 (Scrolling through a screenshared document.)

2 Q. Mr. Kao's -- right there.

3 So Mr. Kao's response here says he's,
4 "Speaking of moving funds around maybe we should
5 start moving slowly more funds out of CPB over the
6 next few months, wash it from them before moving it
7 all back to CPB. That way it looks like 'new' funds.
8 Is it difficult to change the account that the
9 government PMT systems sends money to? Can have them
10 send to Navatek Merrill account until we exhaust the
11 CPB loan funds currently in there. That way it even
12 looks like we're using it for payroll."

13 What did you take this to mean, Mr. Simon?

14 A. This is the email I was referring to at the
15 beginning of my cross-examination. They are clearly
16 trying to deceive Central Pacific Bank hereby
17 creating the illusion that they are actually using
18 the money for payroll and to try to hide from them
19 the fact that the federal government is covering the
20 payroll already as part of their contract.

21 And so, Mr. Kao has come up with a scheme
22 here to wash the money in and out of the account to
23 create the illusion that this money is being used for
24 something it's not.

25 Q. Because Mr. Kao is on all of these emails

Page 404

1 and is authoring many of them, is it plausible to you
2 if he decides to blame Mr. Lum Kee and Mr. Chen, his
3 lieutenants, as having done this?

4 A. No. These guys were clearly in bed together
5 making all this happen.

6 Q. Then going up to the top email. What is
7 Mr. Kao saying there?

8 A. I remember this one. "And it looks like we
9 are indeed getting stiffed by COVID-19 with CPB. No
10 cash payments coming in for gov when the look. I'm
11 starting to fall in love with COVID-19. Will for
12 sure be the case if we get Radius and FHB. So much
13 so I wish I could have take credit for starting it."

14 Q. What did you take this to mean?

15 A. This is sort of ghoulish, the idea that he
16 loves this COVID-19 because he's able to get all this
17 money from banks.

18 The idea that he's going to love it even
19 more if they can get the loans that he never should
20 have applied for in the first place from Radius and
21 First Hawaiian Bank.

22 Again, I just find this distasteful during a
23 time where like hundreds of thousands of Americans
24 are dying and the economy has crawled to a halt that
25 he loves COVID-19 so much he wished he could have

Page 405

1 taken credit for starting it.

2 Q. That was Exhibit 143. Let's now turn to
3 Exhibit 17, please.

4 (Screensharing a document.)

5 Q. You saw this, Mr. Simon?

6 A. Yes. This one jumped out at me also.

7 Q. This is dated May 1, 2020 now. It's an
8 email from Mr. Chen to Mr. Kao. And it texts a
9 Bloomberg news article about how the department sees
10 early fraud.

11 A. Exactly. The timing here is relevant.
12 Because at this point he had already applied for
13 three different PPP loans all of which had false
14 statements in the loan applications.

15 Q. Okay. Now, in response to this, Exhibit 18,
16 please.

17 (Screensharing a document.)

18 Q. Mr. Kao responds to Mr. Chen's email. Go
19 back to Exhibit 17. I'm sorry.

20 (Screensharing a document.)

21 Q. Exhibit 17, the time is May 1, 2020 at
22 2:18 a.m.

23 A. Right. That time Mr. Chen is telling
24 Mr. Kao that the Justice department is seeing fraud
25 in SBA, in this all these PPP loans.

Page 406

1 Q. Now, go to Exhibit 18.

2 (Screensharing a document.)

3 Q. And this is now May 1, 2020 at 2:25 a.m.
4 Shortly after.

5 A. Exactly.

6 Q. And Mr. Kao's response is?

7 A. FK. I think we can all assume what he means
8 by that, yeah. He's clearly not taking the news of
9 Department of Justice investigations of PPP loan
10 fraud well.

11 Q. All right. We've already --

12 THE ARBITRATOR: Maybe pause for a bit.
13 We've been going about an hour.

14 (Discussion off the record.)

15 THE ARBITRATOR: We will resume at around
16 2:15.

17 (Whereupon, a recess was taken from
18 2:06 p.m. to 2:18 p.m.)

19 THE ARBITRATOR: You're on your examination,
20 David. Go ahead. It's about 2:18.

21 BY MR. LOUIE:

22 Q. Let's pull up Exhibit 11.

23 (Screensharing a document.)

24 Q. Mr. Simon, Mr. Kiuchi asked you, well, he
25 was suggesting to you that you didn't know if Mr. Kao