EXHIBIT 33

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

BLUE FLAME MEDICAL, LLC,	)
	)
Plaintiff,	) Civil Action No.
	)
vs.	) 1:20-cv-00658
	)
CHAIN BRIDGE BANK, N.A.,	) (LMB/IDD)
JOHN J. BROUGH, and DAVID	)
M. EVINGER,	)
	)
Defendant.	)
___________________________	)
CHAIN BRIDGE BANK, N.A.,	)
	)
Third-Party Plaintiff,	)
	)
vs.	)
	)
JPMORGAN CHASE BANK, N.A.,	)
	)
Third-Party Defendant.	)

REMOTE VIDEOCONFERENCE
VIDEO-RECORDED DEPOSITION OF DAVID EVINGER
Friday, January 29, 2021, 9:32 a.m.
Oak Hill, Virginia

Reported By: Marjorie Peters, FAPR, RMR, CRR, RSA
Job Number: 4398572

Q. I'm just asking about what you read.
You're aware that, for example, Regulation J specifically allows a return if a deposit was made into the wrong account; correct?
MR. ORSECK: Object to form. Foundation.
A. I believe there's a provision for that type of return.
Q. And there's also a provision for a return if it was a duplicate wire transfer, when only one was made.
Do you recall that?
MR. ORSECK: Object to form.
A. I recall that there is a return provision for duplicate.
Q. Neither of those circumstances were present in connection with the wire that was made to Blue Flame Medical from the State of California; is that correct?
MR. ORSECK: Object to form.
A. I think, Mr. White, there were other elements present that were -- that caused us concern

that were being evaluated, but your question --
Q. That's not responsive to that question.
Was there any concern that the amount that was wired in Blue Flame Medical was sent into the wrong account? Did that concern exist?
MR. ORSECK: Object to form.
A. I don't believe that was the case for this particular wire.
Q. In fact, the wire was meant to be sent by the State of California into the account for Blue Flame Medical that Chain Bridge Bank helped; isn't that right?
A. I believe that is the case; it went to the proper account.
Q. And --
A. Can I interrupt real quick, Mr. White? I have someone outside my door that has -- there's some disruption. Would you allow me just 15 seconds; I can just ask them to lower their voice.
MR. WHITE: Sure. We can take a break for -- there's no reason for you to have to rush that. We can take a break for a couple of

circumstances certainly warranted it, along with the very large size of the money that was coming in.

Q. The records we have seen, Mr. Evinger, indicate that this conversation lasted about 19 minutes.

Does that accord with your recollection of the length of the conversation that you and Mr. Brough had with Mr. Gula and Mr. Case?

A. Yes, that does.

Q. Did Mr. Gula tell you about Blue Flame Medical during that conversation?

A. He provided us with a brief overview of Blue Flame Medical, and its intended new business.

Q. I take it he told you as well about the contract to supply 100 million N95 masks to the State of California; correct?

A. He reviewed the contract with the State of California with us, and gave us an overview.

Q. I take it he also told you or confirmed, because you had already heard it, that Blue Flame was expecting a wire for over $450 million either that day or the following day from the State of

California; is that right?
MR. ORSECK: Object to form.
A. Mr. Gula was asking us on the call several times whether the wire had arrived yet or not. He had -- he has wanted to know if it had hit our wire room on our call, and asked if we could check.
Q. Did you all check during the call?
A. I do recall checking, and I e-mailed him back. Whether it was during the call or shortly thereafter -- I know we did it after. But I'm not sure if we did it during the call because we were talking to him, but he wanted us to verify whether the wire had already arrived or not.
Q. He disclosed to you the amount of the wire that he was expecting; is that correct?
A. Yes. He told us it was going to be for $450 million, approximately, and it was a down payment towards a larger amount -- contract that they had with the state.
Q. Do you recall him telling you that the manufacturer of the masks -- one of the

manufacturers was a Chinese company called Great Health Companion?

Do you recall that coming up during the call?

A. He spoke about a company. I believe that was correct. Great Health -- Greater Health. I believe he referenced that.

Q. And that they were going to be manufacturing the masks in China; is that correct?

A. Yes. The masks would be manufactured in China.

Q. Did he also tell you the name of the company that was -- that was the owner of Great Health Companion, Hakim Unique -- I am sorry, Hakim Unique Internet Company?

Did he tell you that?

A. I seem to recall that, yes. And it was hard to understand what it -- what the name was on the call or to spell it, but that sounds like something -- yes, that sounds as if that was said.

Q. And he told you that Blue Flame was going to use the funds wired by California to pay the suppliers of the masks for California's order; isn't that right?

A. He gave us rough -- rough details. He was not specific with amounts or -- or dates or times. It was general -- generalizations were provided.

Q. Did he confirm, as you had heard before, that Blue Flame would not be wiring all of the funds that were wired to it out of the account at Chain Bridge Bank?

Do you recall him saying that?

A. I don't -- I don't -- I don't remember exactly it said that way, but it came across is that there would be money moving out within several days or sooner, for purchases of personal protective equipment.

He was not able to provide us with exact information of that or the timing or the dollar amounts of those outgoing at that point of the call.

So I don't know how much would be remaining in the account, if you will.

So I think the conversation probably had many components to it, and it had elements of what -- what would be money remaining in the bank. But it was a very high-level overview versus a very granular discussion.

Q. Do you recall Mr. Gula offering to answer any questions or provide any documentation that you might request regarding the transaction during this phone call?

A. He offered to provide documentations. We requested documentation to support this large amount, this contract, for a new company.

Q. I take it, it is not your role as bankers for your customer to do diligence for the State of California on their contracting counterparties, is it?

Do you view that as part of your role?

MR. ORSECK: Object to form.

A. So our job is to know our customer and to know their business with respect to new accounts, onboarding of those accounts, any unusual

The money was actually conveyed to Chain Bridge's account, wasn't it?

A. I was referring -- referring to the contracts. Sure. The money was wired by the State of California.

Q. Based on their contract with Blue Flame Medical, as they said; correct?

A. Again, we -- I had no contract to review, so I didn't have anything to -- to validate that.

Q. My question was whether they told you they had an agreement with Blue Flame Medical.

Did they tell you that, the State of California?

A. They said they were doing business with Blue Flame Medical.

Q. Just like he told you they were; correct?

A. It appeared that Blue Flame had made arrangements with California, but, again, we didn't have any supporting documentation as to the contract underlying terms or anything.

A. Can you repeat that again?
Q. You ultimately did become satisfied that California had reached an agreement with Blue Flame Medical to pay them to provide these masks; isn't that correct?
A. I guess I have -- you're asking me how did California --
Q. Let me try it again.
A. Yeah. Can you please --
Q. The State of California -- the State of California informed you that they had an agreement with Blue Flame Medical to pay Blue Flame Medical to provide these masks; correct?
A. They referenced Blue Flame Medical when we spoke to them, but we didn't get any -- any other information related to specifics of their due diligence process.
Again, they were...
Q. I didn't ask you about their due diligence process. What I asked you is whether they represented to you, Chain Bridge Bank, that they had an agreement to pay this money to Blue Flame Medical

to supply N95 masks; isn't that true?

A. They referenced that Blue Flame Medical was their vendor, but that's what I can recall.

Q. And that $450 million-plus had been sent to Chain Bridge Bank to pay for N95 masks for the State of California from Blue Flame Medical.

They confirmed that, too, didn't they?

A. There was conversation about that on the phone call.

Q. So that's a "yes," California did confirm that; right?

A. It confirmed the amount of the intended wire.

Q. And what it was for; correct?

A. They believed they were purchasing N95 masks.

Q. And that's exactly what Mr. Gula told you that the agreement was; correct?

A. That's what Mr. Gula thought he was -- he was entering into, but, again, we didn't have any documentation to support it.

Q. As a matter of fact, you at one point on the 26th informed your entire staff at Chain Bridge Bank not to contact Mr. Gula; is that correct?
A. We sent an e-mail to our team to stand down, essentially, to not contact him, so we could continue to do our due diligence.
Q. If your concern was the contracts, Mr. Evinger, why didn't someone contact Mr. Gula on the 26th to let him know that that was your concern?
A. I believe we were fairly clear with him on our need and in the follow-up e-mail of what we wanted.
So I didn't feel like there was a requirement to follow up with him. I think if you wanted to supply those, he knew that those were necessary for the bank, and that we were needing them.
Q. Are you saying that during your conversation with Mr. Gula on the 25th, you told him that the contracts were necessary in order to process this transaction; is that what you're saying?

A. What I'm saying is that we asked him for contracts to support this very large and unusual wire for a new business, and we needed those for support.

Q. When did you contact --

A. We didn't know --

Q. When did you contact Mr. Gula on the 26th?

A. I don't know that I spoke -- e-mailed him back on the 26th. I can't recall. I spoke to him in person on the 26th.

Q. After the money had been returned to California; correct?

MR. ORSECK: Object to form. Foundation.

Q. You can answer.

A. Mr. White, our conversation in person with Mr. Gula was prior to the funds being returned.

Q. When was your -- what time of day was your conversation with Mr. Gula?

A. Approximately 2:30 p.m.

Q. So the funds were still in Blue Flame

You can answer, if you are able to understand the question.

A. I have nothing further on this topic.

Q. You mentioned a call after the wire came in. What was the next sequential call that you were involved in? Was it with the State of California or JPMorgan?

A. Are you referring to following our call with JPMorgan, Mr. White?

Q. Actually, I mean on the 26th. You didn't have any communications with Mike Gula on the 26th; is that correct?

MR. ORSECK: No. Objection to form.

A. Met with him in person.

Q. Prior to meeting with him in person, were there any other communications that you had with Mr. Gula on the 26th?

A. I don't recall there being any.

Q. You did have communications about this wire transfers with others outside the bank. I think you mentioned conversations with the State of California representatives and JPMorgan.

Do I have that right?

A. That's correct.

Q. Which one was first?

A. So we placed an initial phone call to the Department of General Services. That was an initial outreach shortly after receiving the wire. There was really no communication with that call.

Q. What was the purpose of that call?

A. We wanted to confirm that they, being California, intended to order or have a contract for $450 million with Blue Flame Medical.

Q. Did they confirm that?

A. Well, Mr. White, our initial call was simply to leave our name and number and who we were, to return our call. We didn't speak to anyone with any -- any specificity.

MR. WHITE: I'm going to load up Tab 16, Greg. It's a transcript of a -- I believe it's a voicemail that we received in discovery, although I'll ask you to describe what it is.

It would be the next sequential Plaintiff's Exhibit, which is --

MR. COLWILL: 67. It's an audio recording.

MR. WHITE: Plaintiff's Exhibit 67. It's what?

MR. COLWILL: Audio recording.

MR. WHITE: It's an audio recording. Thank you.

(Plaintiff Exhibit 67, audio recording, CBB00000707, was marked for identification.)

(Audio recording played.)

Q. Mr. Evinger, was that a voicemail -- excuse me -- left on your office line on the 26th of March?

A. Yes.

Q. This is in response to the call you made to the State of California seeking confirmation about the wire transfer; is that correct?

A. Yes.

Q. Ms. Chang -- Ms. Chang, I'm sorry, confirmed that the wire transfer in the specific amount from the State of California was a legitimate transfer; is that correct?

A. That's what the message said, yes.
Q. Then you called her back; right?
A. Yes. We called back. We wanted to speak with her directly.
MR. WHITE: If you could play Tab 17. This will be the next sequential exhibit number.
(Plaintiff Exhibit 68, audio recording, CBB00002543, was marked for identification.)
MR. COLWILL: 68.
MR. WHITE: It's an audio recording, Plaintiff's Exhibit 68.
(Audio recording played.)
BY MR. WHITE:
Q. Mr. Evinger, that's your voice on that call; correct?
A. Yes, it is.
Q. How did this call come to be recorded?
A. John Brough used his cell phone.
Q. Was John Brough -- were you in your office when you placed this call?
A. Yes, we were.

Q. I take it you placed the call in response to the voicemail; is that correct?

A. That's right. The call was placed based on the number left on the voicemail.

Q. I note that the recording starts in the middle of the call.

Do you know why that is?

A. I don't know.

Q. Did Mr. Brough or you let Ms. Chang know that the call was being recorded?

A. I don't recall that coming up, no.

Q. Did Mr. Brough take out his cell phone to record this call?

A. I don't -- I don't remember.

Q. Why did you want to talk to the treasurer's office?

A. I think it would be appropriate for us to get confirmation from the source of the payment, that it was properly authorized for this amount of money. It was also offered and we accepted. We didn't reject it. It would...

Q. After this call, you did, in fact, have a call with the California State Treasurer's Office; correct?

A. They did -- they did eventually call us, yes.

Q. That was a Mr. Mark Hariri and Ms. Natalie Gonzales; is that right?

A. Yes. That sounds right. I think she may go by Saunders [ph]. I'm not 100 percent sure of that.

Q. Did they say why they were calling?

A. They were following up on the request for -- from the Department of General Services for Ms. Chang.

Q. Did they confirm for you that the wire transfer was indeed in connection with an agreement with Blue Flame Medical to supply N95 masks?

A. They made reference to that the state was attempting to purchase N95 masks.

Q. Why did you want to speak with them?

A. We wanted to confirm that the wire was proper -- properly authorized in their office, and that the funds were intended to go to Blue Flame

Medical, and they knew about the -- about the overall transaction.

Q. And you confirmed that the funds were properly authorized; correct?

A. There was a discussion about that.

Q. And they told you that the fund -- that the transfer had been authorized to Blue Flame Medical; correct?

A. They said that the funds were approved for the purchase.

Q. And that the funds were being sent to Blue Flame Medical for the purchase of N95 masks; correct?

A. That's what they thought they were purchasing, yes.

Q. And that Blue Flame Medical was the intended recipient; correct?

A. They referenced Blue Flame, I believe, yes.

Q. So they had confirmed all of the aspects that you wanted confirmed; that there was an agreement with Blue Flame Medical, and they meant to research on their end and work with their bank, JPMorgan, who had made outreach, apparently.

Q. Ms. Gonzales recalls that during that conversation, she asked whether the money -- the wire had been deposited into the Blue Flame Medical account.

Do you remember her asking about that?

A. There was a discussion about funds, and if they had -- they were in the account and had -- was all of the money still available or was money not there.

And so I think that she asked -- inquired about did we still have possession of the money, and she was comforted that we had the money and a hold on it while they and we determined if it was all in place properly.

Q. She calls you saying that the money had not been deposited into the Blue Flame Medical account. Is her recollection on that accurate?

A. Well, what I recall is we were discussing Chain Bridge Bank having possession of the money, and it was all still there.

I guess, in my terminology, if I said, you know, we had a hold on it, so -- and the availability would have been subject to our funds availability policy.

So I don't know that I -- I know we talked about funds and whether they're still there at the bank. If her impression was that -- that I said no, I don't -- I don't know that I have any information to recollect that, and I don't have -- I don't have a memory of that specifically, but I know we talked about whether the funds were still at the bank and whether we had possession of them and would hold them during this time.

But my -- my statement, I guess would --

Q. But -- go ahead. Go ahead.

A. So I was going to say that if I heard you correctly, she was saying the funds -- she -- can you repeat the question again, I guess?

I lost my train of thought.

Q. That's fine.

Is it your testimony that you did not tell her that the funds had already been credited to the Blue Flame Medical account?

MR. ORSECK: Object to form.

A. I don't know that I specifically said -- again, my conversation would revolve around us holding the funds, having control of the funds while she worked to do further work with the department and her -- her office, JPMorgan.

Q. Her recollection is that you told her that the funds had not been credited to the Blue Flame account at the time of your conversation.

A. I guess there's a difference in terminology.

MR. ORSECK: Hey. You didn't get a question yet. You didn't get a question yet.

Q. You may finish. Difference in terminology about what?

MR. ORSECK: Object to form.

A. Going back to the conversation we had about whether we had possession of the funds or not, the terminology, to me, credited would mean final credit versus memo post with a hold, but that was a general term.

I don't know that -- I don't recall the specific details of that conversation, but we did talk about maintaining the funds until there was further resolution on their end.

They agreed to do so.

Q. Did you tell her at this point that the funds were in the Blue Flame account?

A. Again, I -- I don't recall that specific point. I recall a general conversation about the bank having the funds and having a hold on them.

If that implied that they were in the account, I don't have any reason -- I don't know what she was thinking about. She didn't -- she wasn't overly specific one way or the other about it. She just wanted, I think, a -- general knowledge that we -- we had still control of the wire.

Q. But, in fact, the funds were, in fact, in the Blue Flame Medical account subject to the hold that you spoke of; is that correct?

MR. ORSECK: Object to form. Asked and answered.

Q. You can answer.

A. Sorry, Mr. White. I was taking a sip of water.

Q. All right.

A. So as I said, the funds were memo-posted to the client's account and then a hold placed during this process, so I think there was some confusion around that terminology and how it was conveyed.

My memory was that the conversation was more around the bank maintaining that hold while -- while they did more research.

Q. How were the funds logistically moved out of the Blue Flame account and back to California by Chain Bridge Bank?

A. JPMorgan sent a wire recall notice over Fedline.

Q. Did you inform JPMorgan that the money was in the customer's account, and not in the bank's general ledger account at the time?