EXHIBIT 92

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

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BLUE FLAME MEDICAL LLC, :
Plaintiff, :
v. : Civil Action No.
CHAIN BRIDGE BANK, N.A., : 1:20-cv-00658
JOHN J. BROUGH and DAVID M. :
EVINGER, :
Defendants. :
_____ :
CHAIN BRIDGE BANK, N.A., :
Third-Party Plaintiff, :
v. :
JPMORGAN CHASE BANK, N.A., :
Third-Party Defendant. :
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Remote Deposition
Monday, March 29, 2021

Deposition via Zoom of DANIEL KIM, a witness herein, called for examination by counsel for

Q. And continuing on in that same paragraph, in the document that we've been looking at, in the third sentence you say, "He offered to sell 100M N95 masks at a low cost (relative to the current market rate) and have the items ship quickly to California."

First, do you understand 100M to refer to 100 million?

A. Yes.

Q. And do you recall Mr. Thomas making this offer?

A. Yes.

Q. You say that he offered to sell the 100 million N95 masks at a low cost relative to the current market rate. Do you recall what the current market rate was in March of 2020?

A. Let's put it this way. We were getting price ranges up to $12 a mask. I think prior to that, prior to the pandemic, they were as cheap as 63 cents a mask. But at the ranges that we were getting from most folks who had quantities were, if I recall, somewhere around 6 to $8.

Q. And then the next sentence goes on to say,

"As our focus was to get N95s as quickly as possible, and the price was reasonable, our state procurement staff were very interested in Mr. Thomas' offer."

Is this accurate?

A. Yes.

Q. Was getting masks as quickly as possible a top priority for California?

A. Yes.

Q. And why was that?

A. We wanted to save lives.

Q. Did Mr. Thomas say he quickly he could have the items delivered to California?

A. Yes. I don't recall the specifics, but he was talking about days or weeks.

Q. And was the low cost relative to the current market rate also a significant factor for DGS in looking at vendors?

A. Less significant than when we could receive them.

Q. Do you recall at this point if Mr. Thomas offered a specific price per mask?

A. Yes.

Defendants' Exhibit 110?

THE REPORTER: 111.

MS. FORSTEIN: 111, thank you.

So Defendants' Exhibit 111 is Bates number BFM_DGS -- BFM_CA_DGS0775.

(Defendants' Exhibit No. 111 was identified for the record.)

BY MS. FORSTEIN:

Q. Mr. Kim, were you able to open that?

A. Yes.

Q. And if you look at the top email, this is an email from you at 6:26 p.m. on March 25th asking that, "STO, please call me tomorrow a.m. before the wire transfer happens."

Is this the communication that we were just discussing in which you asked STO to alert you before the wire goes out?

A. Yes.

Q. And why did you ask that STO call you before the wire transfer happened?

A. In case there was additional information we received between that day and the next day.

Q. Were there any particular issues that you wanted to learn more about?

A. We were in discussions with another vendor, so wanted to get a sense of what that vendor could do.

Q. Who was that other vendor?

A. I'm not sure, but I believe it was 3M.

Q. And at the time, the state was in discussions with that other vendor, possibly 3M, about potentially procuring N95?

A. Yes.

Q. Did you have any concerns at that point about Blue Flame Medical?

A. That's a broad statement. Again, this is an advance payment. I'd have concern with anyone we were doing an advance payment for. But any additional concerns were raised? No.

Q. Was there any additional information that you wanted to get about Blue Flame Medical before the wire went out?

A. My staff had done the vetting, but I wanted to -- I don't know if it -- I don't know the

sequence of events, but I believe I wanted to talk to Mr. Thomas myself.

Q. And why did you want to talk to Mr. Thomas personally?

A. I felt this was a large transaction and wanted to get a sense -- not that that would sway whether we were authorized, because we were authorized to make this advance payment. I just wanted to see if I could get any additional information that would either give me more comfort or less.

Q. And in connection with this other vendor that you were considering at the time, was DGS interested in purchasing 3M masks?

A. Yes.

Q. Did DGS have a preference for 3M masks over other models of masks at that point in time?

A. We were -- beggars couldn't be choosers. We were looking for any N95 masks, period.

Q. Do you recall whether you spoke with Controller Betty Yee on the evening of March 25th?

A. I don't know. If it was the 25th, I might

A. Yes.
Q. Would this information have impacted your impression of Blue Flame Medical as a vendor?
MS. PORTER: Objection. Calls for speculation.
BY MS. FORSTEIN:
Q. Mr. Kim, you can answer.
A. It would have raised alarm bells.
Q. Did you speak with Controller Yee again after this conversation with Mr. Thomas?
A. About what?
Q. About anything on the evening of March 25th.
A. Not that I recall.
Q. If you had known about -- had you had known this additional information about Blue Flame Medical that you said might have set off alarm bells, would you have told this to Controller Yee?
MS. PORTER: Objection. Calls for speculation.
THE WITNESS: Controller Yee is not within my chain of command, so she would not have any

bearing on our decision to purchase or procure through Blue Flame.

BY MS. FORSTEIN:

Q. Understood. I'm asking about Controller Yee because Mr. Chivaro, representing the SCO's office, testified that you spoke with Controller Yee twice on the evening of March 25th, once before and once after you spoke with Mr. Thomas.

Understanding that she's not part of your department, I was simply trying to understand what you may or may not have conveyed to her if you had additional information at the time.

A. I don't recall.

Q. I'm going to put two additional documents into the chat function. So this is BFM_CA_DGS 5363, which I believe will be Defendants' Exhibit 112 and BFM 000200134, which will be Defendants' Exhibit 113.

(Defendants' Exhibit Nos. 112 and 113 were identified for the record.)

BY MS. FORSTEIN:

Q. And if you could open both of these documents.

2281.

MS. FORSTEIN: It's about halfway down the page, the second paragraph.

MS. PORTER: Objection. Misstates the document. I see the name Henry. I don't see the name Mr. Huang. Or maybe I do and it's just too -- it's just too --

MS. FORSTEIN: It's a bit blurry.

MS. PORTER: -- it's just too light of a print to see. Okay. Very good. Thank you.

MS. FORSTEIN: Sure.

BY MS. FORSTEIN:

Q. Mr. Kim, is this the manufacturer that you discussed with Mr. Thomas on the phone?

A. Yes.

Q. And did you have an understanding at the time as to how Mr. Huang planned to source product? Was he planning to manufacture it himself?

A. Again, it's a bit blurry, but my understanding was he owned the plant and manufactured these.

Q. If you look at page 2 where fortunately

the text clears up a little bit and might be a bit easier to read, on the same document there's mention of he -- I believe still referring to Mr. Huang -- "moving heaven and earth to steal from neighboring factories and promised to deliver the full order from his shop alone."

Did you understand that Mr. Huang would also be obtaining product from other factories?

A. I wasn't clear on -- I recall seeing this and wasn't clear on what that meant because he said he would deliver the full order from his shop alone. And frankly, from my standpoint, that was irrelevant. I just needed the product. And it had to be N95s and it had to be delivered quickly.

Q. Did anyone at DGS vet Henry Huang?

A. I don't know.

Q. Do you know if any other departments in the state of California vetted Henry Huang?

A. No.

MS. PORTER: Objection. Calls for speculation. Lack of foundation.

BY MS. FORSTEIN:

document with your notes, DGS 6516.

A. Mm-hmm.

Q. If you look at the middle of the second page, it says, "On 3/26 at roughly 5:00 p.m., I talked to two members of the CHP for roughly 15 minutes." Do you see how then the text appears to peter out where it says, "I told them that," and then there's blank space?

A. Yes.

Q. Do you know -- do you know why this stops mid sentence?

A. No. I think I wrote some stuff and I didn't save it, but I did not -- I don't know why. But it was not redacted or edited out consciously.

Q. And if I could direct you back to Defendants' Exhibit 112, which is the text chain with you and Mr. Thomas. The title is BFM 000200134.

A. Mm-hmm.

Q. I apologize. I'm having a technical difficulty.

A. Sure.

Q. If you look at the third text message on

March 27th at 8:02:55 a.m.

A. Mm-hmm.

Q. It looks like Mr. Thomas said, "Hi, Dan. Can you call me ASAP? I found a workaround that you and the State will like for the product we have on its way."

Did you ever learn what this workaround referred to?

A. I believe this is in reference to the -- moving the monies in smaller tranches to a different bank. I believe it's the same as the workaround that he talked about on March 26th at 4:58 p.m., but I don't know because I didn't talk to him about that.

Q. And Mr. Thomas wrote, "I found a workaround that you and the State will like for the product we have on its way."

Did you understand Mr. Thomas to be saying that Blue Flame Medical already had masks in transit to California at this point in time?

A. That's what his text indicated, that something was on its way.

Q. Did you understand this to be the one

million masks that Mr. Thomas had told you he was having put on a jet as a measure of goodwill?

A. I don't know. I just looked at the text and I didn't ask -- I didn't ask for clarification.

Q. Why didn't you ask for clarification?

A. Because I didn't think it was in the state's best interest for me to talk to him at that point in time.

Q. And why was that?

A. Because the CHP had been involved. And I don't know if I talked to the FBI before or after that, but I wanted to -- there was no point in me discussing at this point in time until I got a better sense of what our next steps would be as a state.

Q. And at that point in time, who would have determined what the state's next steps would be?

A. Again, at that point in time with the pandemic, there were a number of people working together on these issues and I think we would be consulting with a number of parties.

Q. And I know you've mentioned some of them before, but I just want to make sure I understand

sort of what the structure was at that unique point in time in California. So who would you have been potentially consulting with?

A. I would be consulting with my secretary, my boss, and I'm sure she would be consulting with others as well. And given that this was an investigation, Cal OES has an investigative arm, so they would be looking into the matter.

Q. And if you rook back at the text message chain, if you look down, there's a few responses back and forth. And then at 8:56:10 a.m., you say, "As I mentioned, I will have to elevate this and someone will be in touch with you."

Who would you have elevated this matter to?

A. I think I was not elevating this matter. I was just telling him that this was being elevated. I think by that time, we had had a conversation with Mr. Thomas and Mr. Bearman and asked them -- I think they had proposed moving the monies in tranches. I had asked about why the monies were returned and that caused us alarm and I'd have to investigate that

further before we proceeded.

And I want to clarify that that thumbs-up was not to Mr. Thomas. I accidentally responded to him when I was responding -- or thought I was responding to someone else about something else. And that's why I wrote that other note below saying I thought I was texting a colleague from the state about a meeting.

Q. And in the call that you had with Mr. Thomas and Mr. Bearman, did they tell -- when you asked why the monies were returned, what did they tell you?

A. I recall that the sum was too large and that's why it got kicked back. But I don't know the details. Indicated that the bank had made some mistake.

Q. And after these texts on March 27th that we have in this document, did you have any further contact with Mr. Thomas at any point in time after these texts?

A. No.

Q. At any point after March 26th, did

Mr. Thomas ever tell you that a shipment of masks would arrive on April 2nd?

A. I don't believe I had contact with Mr. Thomas after the phone call that I had with him and Mr. Bearman. He may have texted me. I don't know. But it would have been in this chain, right? So I don't know.

Q. Do you recall if, after the conversation you had with Mr. Thomas and Mr. Bearman, anyone told you that a shipment of Blue Flame Medical masks would arrive on April 2nd?

A. No.

Q. Do you recall if Mr. Thomas ever told you that Blue Flame Medical could provide a list of other states and organizations that had contracted with Blue Flame Medical?

A. No.

Q. Did Mr. Thomas ever tell you that Governor DeSantis of Florida would be happy to speak with you about working with Blue Flame Medical?

A. I don't recall.

Q. Did you ever speak with anyone in the

government of Florida about Blue Flame Medical?

A. No.

Q. After March 26, did you have any further contact with Mike Gula?

MS. PORTER: Objection. Assumes facts not in evidence.

THE WITNESS: I don't believe I had any contact with Mike Gula, period.

BY MS. FORSTEIN:

Q. And after the call that you had with Mr. Thomas and Mr. Bearman on March 26th, did you have any further contact with Mr. Bearman?

A. No.

Q. And after March 26th, just to round this out, did you have any further contacts with anyone else at Blue Flame Medical?

A. No. The last contact I had was that conversation I had with Mr. Bearman and Mr. Thomas and the texts that I sent saying that I didn't -- that thumbs-up was not for him.

Q. Did you ever speak with the FBI about Blue Flame Medical?

logistics commodity movement task force.

Q. Do you recall what the secretary's reaction was to learning that the FBI was investigating Blue Flame Medical?

A. I don't recall, but I'm sure it wasn't good.

Q. Could you explain what that means?

A. Well, I don't think anyone likes having anything investigated by the FBI. But, you know, we were looking into this and seeing what do we do about this. We -- but I'm not clear what -- what you want me to say or ask. I need some more -- what are you trying to get at?

Q. I'm truly just trying to understand what, if anything, the reaction was --

A. The reaction was probably similar to mine. Negative. Wow. This is not good.

Q. Do you know if California continued to discuss payment mechanisms and terms with Blue Flame Medical after March 27th?

MS. PORTER: Objection. Lack of foundation.

THE WITNESS: I don't know of any.

BY MS. FORSTEIN:

Q. Did you know that Michael Wong continued to email with John Thomas about pricing and payment options after March 27?

A. No.

Q. Did you know that Blue Flame Medical opened an account at a different bank where it could receive wires in early April of 2020?

A. No.

Q. Did you have any communications at any point with Stephanie Daily Smith about Blue Flame Medical?

A. No.

Q. Do you have any recollection of California wanting to see proof of Blue Flame Medical's product by April 2nd?

A. No.

Q. Do you have any recollection that around April 2nd, California was discussing another deal for N95 masks with another vendor?

A. We were discussing that with multiple

OES, Cal Fire, EMSA and public health as part of the team. But it really depended on that specific procurement, who was looking at it.

Q. Do you know which of those agencies were involved in the vetting of Blue Flame Medical?

A. No.

Q. I believe you said earlier today that you had an 8:00 a.m. deadline with respect to issuing the wire transfer to Blue Flame for the advance payment and that you had been given that time, 8:00 a.m., by your staff.

Did your staff ever tell you why Blue Flame needed the wire transfer by 8:00 a.m. that day?

A. My vague recollection it was staff. My understanding was we needed it by 8:00 a.m. because -- my earlier understanding was we needed it by 5:00 p.m. the date prior to that so that Blue Flame wanted the advance as soon as possible.

MS. FORSTEIN: And I object to the question for misstating testimony.

BY MR. KETCHAM-COLWILL:

Q. Do you have an understanding as to why

Blue Flame wanted that advance payment as soon as possible?

A. My understanding is that there were a number of other entities that wanted to procure N95 masks. And so to secure the supply, we needed to provide the payment sooner rather than later so that we would be the ones to receive the masks.

Q. And just a little while ago, you spoke with Ms. Forstein about a company called BYD that the state contracted with to prepare -- sorry, to supply N95 masks and other masks. And I believe you said that BYD provided the state with a shipment schedule during the negotiations of that contract that included penalties if BYD did not perform according to that schedule.

Do you recall that testimony?

A. I recall saying that. I don't know if penalties is the right term. I know I used that when Ms. Forstein asked the question. But I know that we had provisions and clawbacks included.

Q. Do you recall specifically what those were?