

No. 13-3388

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

R.J. Zayed, In His Capacity As Court-Appointed Receiver For
The Oxford Global Partners, LLC, Universal Brokerage FX,
And Other Receiver Entities,

Plaintiff-Appellant,

– v. –

Associated Bank, N.A.,

Defendant-Appellee.

On Appeal from the United States District Court for the
District of Minnesota
(No. 3:13-cv-00232-DSD)
The Honorable David S. Doty

APPELLEE’S ADDENDUM

Charles F. Webber
FAEGRE BAKER DANIELS LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
(612) 766-7000

Charles A. Rothfeld
Alex C. Lakatos
Paul W. Hughes
James F. Tierney
MAYER BROWN LLP
1999 K Street NW
Washington, DC 20006
(202) 263-3000
crothfeld@mayerbrown.com

Counsel for Defendant-Appellee

TABLE OF CONTENTS

Affidavit of Lien Edward Sarles..... 1

Exhibit 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Howard Phillips, et al.,

Case No. 09-CV-1732 (MJD/JJK)

Plaintiffs,

v.

AFFIDAVIT OF
LIEN EDWARD SARLES

Trevor Cook, et. al.,

Defendants.

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Lien Edward Sarles, after being duly sworn under oath, deposes and states as follows:

1. This Affidavit is a summary of certain facts about my employment at Associated Bank. The Affidavit does not contain everything I know about the facts, people and events described in the Affidavit; however, the facts described in this Affidavit are entirely accurate to the best of my knowledge and recollection.

2. I am twenty-seven years old and a resident of Lilydale, Minnesota.

3. Since graduating from St. Cloud State University five years ago, until July 2009, I ~~have worked continuously in the banking industry.~~

4. My post-graduation position was as a banker at TCF Bank, which primarily involved providing retail banking services to TCF customers.

5. In November 2007, I accepted a position at Associated Bank as an Assistant Vice President in the business-banking department. I remained in this position until July 21, 2009.

6. At Associated Bank, I was required to, and did complete, mandatory compliance training. This training consisted of online questions and answers relating to mandatory banking procedures. In addition, I relied on my previous banking experience in performing the duties and responsibilities of my position. I was provided standard forms for account opening and related bank activities.

7. My primary duties and responsibilities at Associated Bank included marketing, opening new commercial accounts, and providing account management and services to new and existing commercial customers.

8. I first became acquainted with Patrick Kiley in December 2007 or January 2008, after my step-brother, Michael Behm, referred Kiley to me for Kiley's commercial banking needs. Through Kiley, I was introduced to Trevor Cook, Christopher Pettengill and Kiley's assistant, Julia Smith.

9. I personally met with Kiley to assist him in opening commercial accounts for the following entities: Universal Brokerage FX Management, LLC; Crown Forex LLC; and Basel Group LLC. Kiley and Julia Smith ("Smith") were the account signatories for these accounts. Kiley told me that these accounts would be used to hold client investment funds.

10. I personally met with Cook to assist him in opening commercial accounts for the following entities: Oxford Global FX, LLC; Oxford Global Partners, LLC, and Market Shot LLC. Cook was the account signatory for these accounts. I was given the impression that the Oxford Global Partners, LLC account would hold client investment funds, because Cook told me that the other two accounts would not hold client investment funds.

11. To my knowledge, banks are required to implement a Customer Identification Program that includes procedures for verifying a customer's true identity, collecting specific

information from each customer when opening an account, taking action when a customer's identity cannot be appropriately verified, maintaining appropriate records during the collection and verification of a customer's identity.

12. Associated Bank did have account opening procedures. To the best of my recollection, Associated Bank's procedures, like TCF Bank's procedures, require the following when opening an account: name and birth date for individuals; a mailing address for individuals and entities; a Social Security number for individuals, and a valid tax identification number or employer identification number for entities; Secretary of State registration information for entities; and signature cards.

13. To the best of my recollection, for all but one of the above-referenced accounts, I obtained valid identifications from account signatories, Secretary of State registration documentation on account holders, tax identification numbers, Depository Declarations, and Written Operating Agreements or signed "Declarations of No Written Operating Agreement."

14. I had previously opened accounts for Kiley and Cook and had been provided by them all necessary account opening documents and information. When I opened the Crown Forex LLC account, I was not provided with Secretary of State registration documentation. I told Kiley that he must send the documentation to me after he completed a Secretary of State filing for Crown Forex LLC. At the time I was opening the Crown Forex LLC account, I was aware that the account would hold client investment funds.

15. To the best of my recollection, the account opening information that I obtained for the Crown Forex LLC account was a New Account form, a Depository Declaration, an employer identification number, a signature card, a mailing address, an application for Articles of Organization, and a Declaration of No Written Operating Agreement.

16. I did not verify the address or employer identification number that Kiley provided for Crown Forex LLC.

17. I did not remember to follow-up with Kiley to obtain the missing Secretary of State registration documentation. To the best of my knowledge, the Crown Forex LLC account remained open and active despite a lack of proof of Secretary of State registration.

18. In the first quarter of 2009, I recall receiving emails from Associated Bank reminding me to obtain certain account opening materials related to customer accounts that I was opening.

19. Around this time, one of the administrative assistants informed me that the monitoring department would be closing or freezing accounts after a forty-five day period if the proper account opening documentation was not provided.

20. Once I opened the above-referenced accounts for Cook and Kiley, I assisted Cook, Kiley, and Kiley's assistant, Julia Smith, in setting up the accounts for exclusive on-line banking, so that deposits, withdrawals, and wire transfers could be performed with little or no interaction with Associated Bank personnel.

21. Once the accounts were set up for online banking, I had limited contact with Kiley, Cook and Smith, with the exception of occasional conversations and emails with Smith and Cook about account balances, statements, and wire transfer information. At that point, my primary responsibility was to provide customer service for these accounts. I was not responsible for monitoring these accounts for suspicious account activity, withdrawals over \$10,000, and irregularities and inconsistencies in check endorsements and payees.

22. For example, I was not responsible for determining whether checks written to "Crown Bank" or "Crown Forex S.A." could be properly deposited into an account for Crown

Forex LLC. I never read or filed a suspicious activity or currency transaction report as it relates to Kiley and Cook's Associated Bank accounts.

23. In early July 2009, Cook requested an immediate \$600,000 cash withdrawal from our branch office. Cook stated that he wanted to purchase a yacht that was substantially marked down in price, and that he would receive an additional \$50,000 off the sale price if he promptly paid the seller in cash. I understood that the account from which Cook was seeking to withdraw funds was not an account that held client investment funds.

24. Given the amount of the requested withdrawal, I contacted my supervisor Tamara Simon, by email and telephone, regarding the protocol for handling such a request. To the best of my recollection, my supervisor told me that Cook's request would constitute one of the largest withdrawals from an Associated Bank branch office. My supervisor, my supervisor's superior Stephen Bianchi, and I then had a telephone conference. Following that, my supervisor and I telephoned Cook to request that he purchase the yacht by wiring the funds rather than withdrawing the cash at a branch office. Cook insisted on getting cash from the branch office, and he subsequently was permitted to make the withdrawal from cash that the branch had ordered. About a week after Cook's initial withdrawal request, I personally observed Cook taking the stacks of bills from the branch office.

25. To the best of my recollection, shortly after Cook's withdrawal, the Star Tribune published an article regarding the foreign currency arbitrage program and referenced Cook's involvement therein.

26. Following the publication of this article, Associated Bank commenced an internal investigation initiated by the Green Bay office. It was my understanding that, at the time, Green Bay, Wisconsin was the center of bank operations, including wire transfers, account monitoring,

account processing and internal investigations. I was called into the Associated Bank department investigating the article, and was asked questions about the subject accounts. I explained my involvement with and the status of these accounts and was advised that they might follow-up with additional questions.

27. Approximately two weeks later, on July 21, 2009, I was called into another meeting and, among other things, was questioned about the accounts, was thanked for my efforts, and then summarily terminated by Stephen Bianchi and escorted out of the building.

28. I have since learned that Crown Forex LLC is not a registered entity in any state and that the address it provided was merely a P.O. Box.

29. At no time prior to the Startribune article or the subsequent investigation was I aware that any of the individuals or entities involved in these matters were engaged in criminal or fraudulent activities.

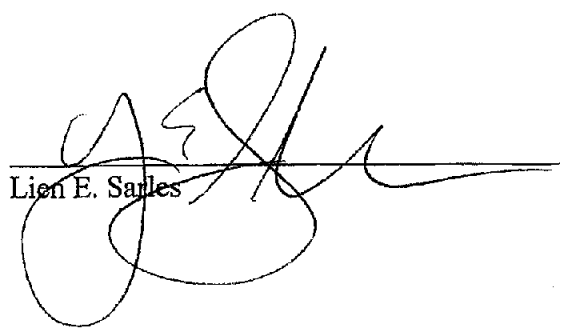
30. In exchange for my providing this Affidavit, counsel for the Plaintiffs in the above-captioned matter agrees that they will not notice my deposition in connection with this case or any factually related litigation. I understand, however, that counsel for any other party may notice my deposition, and that this Affidavit may be used in connection with the above-captioned litigation or any other litigation relating to the facts and circumstances described in this Affidavit.

31. I have signed this Affidavit voluntarily. No threats have been made to me to ~~cause me to sign this Affidavit. Other than the representations contained herein, no promises or~~ representations of any kind have been made to me or my attorney to cause me to sign this Affidavit.

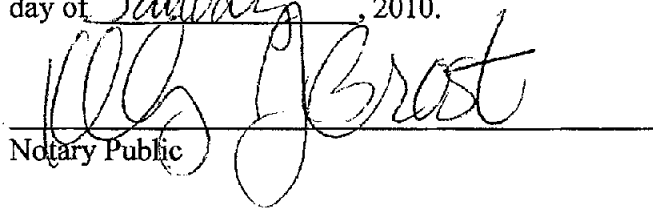
32. I have been given the chance to review this Affidavit with my attorney and I fully understand the consequences of signing this Affidavit.

33. I have been given the chance to make any changes to this Affidavit that I felt were necessary to make it completely truthful. To the best of my knowledge and recollection, this affidavit is true and accurate.

Dated: 1/15, 2010


Lien E. Sarles

Subscribed to and sworn before me this 15
day of January, 2010.


Notary Public

