

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

<p>CONGREGATION HAKSHIVAH, d/b/a/ GEMACH L'SIMCHOS</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">- against -</p> <p>HERSH DEUTSCH and DEUTSCHE VENTURE CAPITAL LLC,</p> <p style="text-align: center;">Defendants.</p>
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Index No.

Motion Sequence 001

**AFFIDAVIT OF ABRAHAM BERNATH**

STATE OF NEW YORK )

) ss.:

COUNTY OF KINGS )

Abraham Bernath, being duly sworn, deposes and says:

1. I am a principal in Transmedia Payment Services Ltd. ("Transmedia"), a company that assists individuals and businesses in the handling of chargeback disputes.

2. Transmedia has been retained by Congregation Hakshivah d/b/a Gemach L'Simchos ("Hakshivah/GLS") to assist them with certain chargeback claims made by an individual Hersh Deutsch, and his company Deutsche Venture Capital LLC ("the Deutsch chargebacks").

3. In that regard Transmedia has undertaken an investigation concerning the facts and circumstances underlying the Deutsch chargebacks. That investigation included conversations with Mr. Arya Gottesman, Hakshivah/GLS's president, Mr. Joel Klein, the owner of Joel K Holdings and Mr. Hersh Deutsch, the principal in Deutsch Venture Capital, LLC, the review and download of numerous WhatsApp conversations obtained from the

cellphones of Messrs. Gottesman and Klein; as well as a review of bank activity, numerous bank statements, and checks issued by or deposited into Mr. Klein's bank accounts.

4. In the course of my investigation I have learned that Mr. Klein communicates from a cellphone number 646-322-1390, and that Mr. Deutsch communicates from a cellphone number 347-680-6000.

5. Mr. Klein has confirmed that the subject charges relate to loans between himself and Mr. Deutsch. Mr. Deutsch would provide Mr. Klein with various credit card numbers and authorized him to charge those cards at merchants such as Hakshivah/GLM and others. The merchant upon receipt of the money from its bank would then send the money to Klein or otherwise credit Klein sometimes less a fee which was intended to reimburse the merchant for any fees paid by the merchant to the credit card processing company.

6. In confirmation of that loan arrangement, I have reviewed Mr. Klein's text communications between himself and Mr. Deutsch over the messaging app WhatsApp relating to the two telephone numbers noted above and relevant excerpts are attached as Exhibit A. Those communications reveal that Mr. Deutsch would send Mr. Klein pictures of his credit card or in some cases the relevant card information via WhatsApp message so that Klein can go to a merchant to submit a charge.

7. The WhatsApp communications also contain specific texts concerning amounts that could be charged to each of the subject credit cards.

#### **The November 2017 Charge**

8. After Deutsch sent Klein a copy of his American Express credit card ending in 1002 (Exhibit A), Hakshiva/GLS charged \$20,000 to this credit card. In

WhatsApp communications between Deutsch and Klein, Deutsch informed Klein that the monies for the \$20,000 loan had to be repaid by January 8, 2018. Exhibit A. I have reviewed banking records for Klein and his companies, and they reveal that on January 8, 2018, Klein issued check number 1796 payable to DEUTSCHE VENTURE CAPITAL LLC for \$20,000 which was deposited into DVC's account. Exhibit B.

### **The January and Early-February Charges**

9. The WhatsApp text communications between Klein and Deutsch also show that on January 16, 2018, Klein advised Deutsch that he wished to charge Deutsch's card through Hakshivah/GLS. Klein repeated this request again on January 17, 2018 and again named GLS as the establishment at which he wanted to charge the cards at. Deutsch responded by asking for the amounts and dates to be charged. On January 18, 2018, at 3:32 PM, Deutsch replied by asking Klein, "can it [be] paid by 13 of February?" and "how much?" Klein responded "yes." Within two minutes, Deutsch providing Klein with pictures of two of his credit cards, and authorized Klein to charge \$50,000 on each. Exhibit A. At 3:41 PM, Klein informed Deutsch that he attempted to charge one of the cards but that it was declined. Deutsch responded to try the charge again, thus, resulting in Hakshivah/GLS having charged two of Deutsch's cards for \$50,000 each.

10. On January 30, 2018, again in a WhatsApp chat, at 12:48 PM Deutsch sent Klein a picture of his credit card ending in 9813 (Exhibit A) with a written message "100 Straight." *Id.* at. Klein responded at 1:54 PM that the charge had been "declined", and on 1:55 PM, Deutsch replied "try now." *Id.*

11. On January 30, 2018, Hakshivah/GLS charged the card ending 9813 for \$100,000.

12. On February 1, 2018, the WhatsApp chat messages between Klein and Deutsch discussed additional charges by Klein for \$100,000. Deutsch responded that the charge could be done so long as it was repaid before February 13. At 9:47 PM, Deutsch sent Klein a picture of his American Express credit card ending in 2000.

13. On February 7, 2018, Deutsch advised Klein by WhatsApp text to prepare payments providing him with a list of four Hakshivah/GLS charges, Deutsch then clarified that there had been five charges and the total due was \$300,000.

14. A review of banking records for Klein reveals that as requested by Deutsch on February 13, 2018, Klein repaid Deutsch the full \$300,000 charged by Hakshivah/GLS.

#### **The Mid-February 2018 charges**

15. In WhatsApp communications on February 7, Deutsch informed Klein that he could recharge the same cards he had previously charged on February 16, 2018. Klein inquired whether he could tell Hakshivah/GLS already now that it was okay to submit the new charges on February 16. Deutsch replied “sure” and confirmed that it was okay to charge the “same cards.” On 2/16/18, after an initial \$100k was successfully charged by Hakshivah/GLS to Deutsch’s card ending 2000, and after some other cards were declined, Klein communicated with Deutsch in an audio-chat messages time-stamped 12:59 pm through 1:07 pm. In those recording, Deutsch directed Klein to charge an additional \$50k on card ending 2000 but to split them to smaller increments if declined. In total, on February 15 and 16 four charges totaling \$145,000 were charged to Deutsch’s cards by Hakshivah/GLS.

16. On March 8, 2018, WhatsApp communications between Klein and Deutsch indicate that Deutsch reminded Klein about payments that were soon to be due as a result

of the Hakshivah transactions. Thus, at 4:40 PM, Deutsch texted Klein that “145k due on April 1” and that these charges were for the “Amex Platinum, HAKSHIVA February 15 and 16.” On March 26, 2018, Deutsch again reminded Klein of the \$145,000 that needed to be paid on April 1. Bank Records for Klein reveal that on April 1, 2018, Klein issued check number 2302 to Deutsch in the amount of \$145,000. Exhibit B.

#### **The August 2018 charges**

17. On August 21, 2018, Hakshivah/GLS made three charges on the Deutsch charges in the amount of \$40,000, \$60,000, and \$36,000.

18. WhatsApp messages between Klein and Deutsch confirm that Deutsch was aware that Klein had charged his card ending 2000 on August 21. For example, after a series of messages by Deutsch to Klein to charge different amounts on different cards, and after his card ending 2000 had already been charged \$100,000 on the same card through Hakshivah, at 2:01 PM, Klein informed Deutsch that “I can have hakshiva do 36 more?,” Deutsch after verifying what had already been charged, agreed that Hakshiva could charge an additional \$36,000. At 2:14 PM Deutsch informed Klein that the charges would have to be paid on October 1.

19. On October 4, 2018, Deutsch reminded Klein that “I need to make a payment to AMEX”, and at 12:32 PM Deutsch provides him with a screenshot of all the Hakshivah transactions totaling the \$136,000, the same transactions that Deutsch has falsely alleged were done without his knowledge and authorization.

20. Bank records for Klein show that from October 15 to October 19, 2018, Klein paid Deutsch \$135,800, i.e., all but \$200 from the amounts charged on August 21, 2018.

21. The foregoing discussion does not detail every charge made by Hakshivah/GLS using the Deutsch cards. My review of documents related to this case shows that Hakshivah/GLS charged Deutsch's Mastercard ending in 8498 for \$50,000 on November 24, 2017, and again Deutsch's cards were charged on January 16, February 18 and February 22. None of these charges have been disputed to date, and a review of the WhatsApp communications between Deutsch and Klein confirm that they were all authorized by Deutsch.

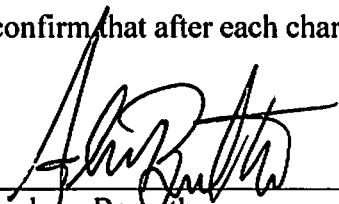
22. On or about November 20, 2018, Deutsch submitted chargebacks to American Express disputing the charges made by Hakshivah/GLS and falsely claiming that all of the charges were unauthorized and unknown to him.

23. A "chargeback" is a reversal of a transaction between a merchant and a cardholder resulting from a dispute between the cardholder and the merchant. Once a dispute is submitted, a chargeback results in a debit to the merchant account for the disputed amount, which is then credited to the cardholder. Chargebacks typically occur for reasons having to do with an allegation by the cardholder that the transaction at issue was unknown to them, or that the cardholder's card was lost or stolen, or due to a merchant's alleged failure to render purchased goods or services as agreed upon between it and its customer credit card holder. In the absence of a true and valid dispute on a transaction, a cardholder would not be entitled to a chargeback credit, and no chargeback can technically be initiated without the submission of some claim by the cardholder giving rise to justify a chargeback. As a result of Deutsch's fraudulent chargeback claims, on November 27, 2018 American Express immediately debited Hakshivah/GLS's account in the amount of \$136,000.


American Express has also notified Hakshivah/GLS that there is an additional \$265,000 in pending disputes which are still being investigated due to the age of the transactions.

24. Our investigation into this matter has revealed that Deutsch has submitted other sham chargeback claims for charges made by Klein at other merchants. Pursuant to the details confirmed at this time, at least three additional merchants (Signature Roofing, AIM Dental (an entity owned by Joel Klein) and Kings Highway Dental), have been identified having incurred such false disputes by Deutsch. With respect to some of those chargebacks Deutsch claimed that he did not receive the "goods or services" purportedly purchased from those merchants, despite the fact that Deutsch knew he never expected any goods or services by these transactions, but rather it was merely Klein initiating these transactions with the express authorization by Deutsch. In the other instances, Deutsch claimed as he did here, that the charges were unauthorized. Exhibit C.

25. Based on my review of these documents, the claim by Mr. Deutsch that the charges at Hakshivah/GLS were unauthorized or done without his knowledge is a complete fabrication. Instead, these charges all appear to have been expressly authorized by Mr. Deutsch, and as stated above, the bank records confirm that after each charge Deutsch was paid back by Klein.

  
Abraham Bernath

Sworn to me this 16<sup>th</sup> day of January, 2019

  
Notary Public

GEORGES E. FRANCOIS  
NOTARY PUBLIC STATE OF NEW YORK  
ORANGE  
LIC. #01FR6359232  
COMM. EXP. 05/22/20 21