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Office of the Public Prosecutor of the Canton of Zurich

Legal Redress/ Money Laundering Proceedings

Our Identification: B-5/2007/551

19th June, 2008

Order to Dismiss

The Office of the Public Prosecutor of the Canton of Zurich

has, in the case against

Barry Yank, born January 29th, 1948, Canadian citizen, legally resident in Bayside Terrace, Old Fort Bay, West Bay Street, Nassau

alias Barry Gerald

Falovitch Gerald

legally defended by: R.A. Jürg M. Ammann, c/o Streichenberg Rechtsanwälte [Eng.= Law partners], Stockerstrasse 38, 8002 Zurich

concerning **money laundering, fraud/embezzlement and falsification of documents**

ordered dismissal for the following reasons:

1.1

On January 30th, 2007, suspicions of wrongdoing in the sense of Article 9 of the GwG [German abbreviation for "Money Laundering Law"] were communicated to the Federal Law Enforcement Office, Department for MROS, in Bern by UBS AG in Zurich (act. 1). The suspicions concerned the business relationship of Global Village Market Holdings (referred in the following as GVMH) and Yank, Barry, who is also the beneficial owner [entitled holder] of the monetary holdings of the accounts held by GVMH. The report by UBS AG was based on a criminal complaint from January 4th, 2007, which UBS AG received delivered from RA Dr. oec. Daniel Fischer.

Jay Gotlieb, who is represented by RA Dr. oec. Daniel Fischer, accuses Yank, Barry of money laundering in this criminal complaint. Jay Gotlieb asserts he first met the accused in spring 2002. He [the accused] is alleged to have convinced the plaintiff, who is reported to have been a neighbor, to enter into business arrangements with him by means of repeated requests, and to have enticed him with promising investments.

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Thereby the accused named known persons as references and indicated that these people had already successfully invested with him. As an additional argument, the accused added that the interest rates in 2003 were so low, that anyone not investing at that time would have to be "crazy". In August of 2003, Jay Gotlieb entered into just such a business relationship and concluded in the name of his company First Capital Investments Mercantile, Inc., a loan contract with the company of

the accused, GVMH, on July 24th, 2003 in Nassau; in said contract, he invested in a project called "Atlantis Phase III," a multi-billion-[currency not given in original text]-project in the field of properties on Paradise Island (Bahamas) belonging to the known and financially strong South African magnate Sol Kerzner (act. 5/2). According to this contract, the contract was approved on August 15th, 2003, for the period of one year. Furthermore, the contract provided for an extension of at most two additional years, provided that the borrower requested such an extension at least 90 days prior to the expiration of the current contract. With respect to repayment, it was agreed that the borrower would have to repay the loan at the end of the loan period, whereby the borrower must also pay, irrespective of this period, quarterly interest of an annualized 11.25%, in the amount of USD 84,375 (act. 6/6). To shore up his project with the plaintiff, the accused asserted that he himself, together with a few other investors, had already financed the first and second phases of the project. Jay Gotlieb then invested a total of approximately USD 3,000,000 in the project here mentioned (act. 6/4 and 6/5). He transferred this amount in August 2003 to the lawyer of the accused in Nassau. Simultaneous to the conclusion of this loan contract, the accused is alleged to have taken on a personal loan guarantee in the full amount of the loan (act. 6/3). The contract was obviously extended commensurately, since Jay Gotlieb received 11 quarterly interest payments, the last of these on August 15th, 2006, on which day the contract would ordinarily have ended. However, the accused did not pay the loan amount owed on August 15th, 2003, back to Jay Gotlieb, but rather informed him, that Sol Kerzner had informed him, that all investors would be paid on November 15th, 2006. The accused, responding to an inquiry, informed Jay Gotlieb that he would be in Zurich on November 15th, 2006, and would settle all his payments then, including those to Jay Gotlieb (act. 6/10). After Jay Gotlieb did not receive repayment of the loan amount on November 15th, 2006, and he [Gotlieb] could no longer contact him [Yank], he was informed that Barry Yank was being sought by the police. The accused continued to stall Jay Gotlieb in the following period with numerous excuses. On December 9th, 2006, the plaintiff met Harry Cohen, another supposed investor, at a wedding at Paradise Island. When questioned concerning the loan in question, Harry Cohen replied that he knew nothing about any such loan.

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At this point in time, Jay Gotlieb realized that he had been deceived concerning the purpose of the loan and the participation of other investors. Had he known, that the accused had not used the money for the project in question and that no other investors were involved, he never would have granted the loan to Barry Yank. The accused had not, as agreed, invested the loan funds in the project, but instead appeared to have transferred them to his private and business accounts, since he had ordered transferred by his lawyer the amount of over 1.5 million USD to the account held by the accused with the UBS AG in Zurich (act. 2/1 and 6/6). The plaintiff also asserted, that Yank, Barry allegedly attempted, through his fiduciary, to withdraw the balances on accounts he held with the UBS AG in Zurich in early 2007, to which end he submitted a supposedly existing contract "Sale and Transfer Agreement" to UBS AG in Zurich, according to which Jay Gotlieb owed the accused a sum of more than 7 million USD. The document, which was alleged to attest the debt owed by Jay Gotlieb, was forged, according to the allegations of the plaintiff, since he owed the accused nothing (act. 6/6, act 13.2 and act. 27/1).

The plaintiff states that he filed a legal complaint of document falsification with respect to the loan against Yank, Barry in the Bahamas (act. 6/11). Here, a legal prosecution for money laundering, larceny or embezzlement and document falsification/ forgery was then initiated.

1.2

With the order of February 2nd, 2007, the District Attorney's Office I of the Canton of Zurich seized the funds frozen pursuant to Art. 10 GwG [money laundering law] by the MROS of the Federal Law Enforcement Office [Federal Police], and with them the assets held by the accused with UBS AG in Zurich with the master file Nr. 0206-215466, registered to the company Global Village Market Holding (Yank, Barry is both one of the beneficial owners, as well as the sole authorized signatory), with a balance of USD 228,077.-- and EUR 27.--, and with master file Nr. 0206-889627, registered to Yank, Barry, with a balance of USD 9,176.--, and EUR 8.--, relating to a possible recovery in the sense of Art. 69 StGB [German abbreviation, "Tax Code"] and §§83 ff. as well as 96 ff. St.PO [German abbreviation, "Criminal Code"] (act. 8/1, act.2/2/ 2/3-5 and act. 2/3/9).

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2.1

The plaintiff further stated that Yank, Barry had been convicted of extortion in Canada in 1973 and of bribing a public official in Texas in 2001. In 1987 he also filed for bankruptcy. Furthermore, various negative reports concerning the accused could be found in diverse media sources (act. 6/12016). Finally, Yank, Barry had been refused as a customer by multiple banks abroad.

According to information provided by UBS AG, the accused had a deposit of over USD 1.5 million, made on October 27th, 2003 transferred from the account of his lawyer Lennox Paton, to the account of the accused with the account Nr. 0206-889627 with UBS AG, exchanged to Euro and thereafter deposited in the account of Global Village Market Holdings with Scotia Private Banking. The accused told UBS AG, that the receipt of payment of over 1.5 million USD allegedly derived from the business activities of GVMH (act. 2/1).

The District Attorney's Office I of Canton Zurich had a notice pursuant to Art. 67a sent to the authorities responsible for criminal prosecution IRSG in the Bahamas on February 2nd, 2007, in order to enable the foreign authorities to initiate a criminal case or pursuit of legal remedy (act.7/1). This notice was then communicated in the English language to the responsible authorities in the Bahamas by the Federal Department of Justice on February 27th, 2007 (act. 7/6). In correspondence dated August 2nd, 2007, the District Attorney's Office I of Canton Zurich requested a reply from the Bahamian authorities with reference to this notice pursuant to Art. 67a IRSG, inquiring whether an attempt at legal remedy in the present case could be expected from the authorities responsible for criminal prosecution (act.20). This correspondence was forwarded by the Federal Department of Justice to the responsible authorities in the Bahamas on August 8th, 2007 (act. 21). With the Interpol inquiry of November 1st, 2007, the District Attorney's Office of Canton Zurich requested clear indications from the responsible authorities in the Bahamas, whether the Bahamian authorities responsible for criminal prosecution would initiate a criminal proceeding against the accused or the GVMH in connection with Jay Gotlieb or First Capital Investment Mercantile Inc., and if they would communicate the current state of the proceedings in the event of a positive answer (act. 28/1). On

the date of March 28th, 2008, Nassau informed Interpol that no criminal proceedings had ever been initiated against the accused, since in the course of police investigations no evidence of legally culpable offenses could be produced.

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In correspondence dated April 19th, 2007, the plaintiff, through his lawyer, sent the District Attorney's Office I of Canton Zurich court documents from Jay Gotlieb's civil case against the accused (act. 12, act. 13/1-2). From these it was clear that the civil court in the Bahamas had issued an order to freeze the assets of accused held in the Bahamas on the date of April 12th, 2007 (act. 13/1).

In correspondence dated May 21st, 2007, the Defense Attorney sent the District Attorney's Office I of Canton Zurich a copy of the correspondence from Police Headquarters in Nassau in the Bahamas dated May 4th, 2007. In this correspondence, it was stated that the police investigation had yielded no indications of a crime of fraud committed by Yank, Barry with reference to the plaintiff, Jay Gotlieb. The parties had been instructed by the Bahamian authorities to pursue the matter further through civil proceedings, which Jay Gotlieb had since initiated. Against this background— according to the statements in the above-referenced correspondence— the authorities responsible for criminal prosecution in the Bahamas have no interest in seizing the Swiss bank balances of Yank, Barry (act. 14 and act. 16/1). In fact, the accused has asserted in the Bahamian civil proceeding, contra the plaintiff, that Jay Gotlieb owes the accused a sum of USD 7.5 million and deriving from the aforementioned loan contract concluded as a "Sale and Transfer Agreement" contract, dating to June 15th, 2004 (act. 15, act. 16/2).

With the correspondence of October 24th, 2007, the Defense Attorney informed the District Attorney's Office I of Canton Zurich with the appropriate documentation, that the Bahamian Supreme Court would not render a decision in the plaintiff's claims in the here-named civil proceeding with a date of October 22nd, 2007, so long as no court decision concerning the accused party's counter-claim for 7.5 million USD could not be presented (act. 23/1-2). The defense attorney could not, however, submit the original of the contract in question, which provided the basis for the counterclaim of the accused, since it was held by the court in the Bahamas. Yank, Barry himself did not have an additional original of this contract (act.23/7). Furthermore, the defense attorney stated in correspondence dated November 12th, 2007 and sent with accompanying documentation, that the accused, because of the opposition's claim that the contract of December 23rd, 2003 had been forged, had arranged for a private expert to certify the authenticity of the signature of the plaintiff. The expert is alleged on the date of June 23rd, 2007, to have arrived with a high degree of confidence at the conclusion that the signature on the contract in question was that of Jay Gotlieb (act. 23/8-9).

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In correspondence dated October 26th, 2007, the plaintiff asserted through his lawyer that the accused apparently lifted the signature of Jay Gotlieb from another document and, by transferring this authentic signature to the document in question, forged a document that he had never actually signed (act. 24/7). The signature of Jay Gotlieb used by the accused was nevertheless written incorrectly. When addressed concerning this matter, the plaintiff stated that the accused had required another signature from the plaintiff for participation in the amount of USD 250,000.—in an investment property in California. Since the plaintiff had already concluded the disputed loan

contract in the amount of 3 million USD with the accused and had, in the meantime, become suspicious concerning his trustworthiness or readiness to repay, he had not wanted to irritate him, so as not to endanger the repayment of his loan, and had therefore, under duress, signed two pages which were presented to him. The plaintiff however intentionally wrote his signature incorrectly for these reasons, namely with “Gottlieb” instead of “Gotlieb”. The plaintiff, however, had no copies of these documents, because the accused did not make any available to him (act. 27/9).

With the order of November 1st, 2007, the District Attorney’s Office I of Canton Zurich had the allegedly forged contract of December 23rd, 2003 with UBS AG, along with other [documents] printed at UBS AG, and also requested information concerning how the bank had come into possession of the contract, as far as it had ever been in possession of it, what had been the purpose of submitting the contract with UBS AG, and whether the accused had attempted to withdraw his frozen assets since February 1st, 2007. UBS AG reported in correspondence from December 3rd, 2007 and January 8th, 2008, that the accused had requested by telephone the execution of a payment in the amount of USD 13,000.—from the account of GVMH (act. 25/1). Additionally, the contract in question from December 23rd, 2003 was never submitted to customer service representatives of UBS AG, and these asserted that they had never seen the aforementioned contract.

2.2.1

Under application of Art.3 Paragraph 1 StGB [German abbreviation= Criminal Code], a crime is only subject to the Swiss Criminal Code, if the perpetrator commits this crime in Switzerland. Articles 4 to 7 of the StGB [Criminal Code] do not appear to apply. A crime is considered to have been committed, where the perpetrator carried it out

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or neglected to act in contravention of legal duties, and in that place, where the results are effected (Art. 8, Pr.1, Swiss Criminal Code).

The plaintiff asserts that the accused has made himself legally culpable of document forgery pursuant to Art.251 Nr. 1 al.1 and 3 of the Swiss Criminal Code [StGB], because he submitted the forged contract, dated December 23rd, 2003, to UBS AG in Zurich, in order to attest a counterclaim against the plaintiff and thereby achieve a release of his frozen assets (act. 27/4). This assertion however could not be substantiated by the injured party, nor confirmed by UBS AG in Zurich. UBS AG indicated to the contrary that the contract in question had never been submitted to them. Neither had the accused sought release of his frozen assets from UBS AG, but rather had attempted— apparently before he had been made aware that his assets had been frozen (UBS AG first received the confiscation order on February 9th, 2007, c.f. act.8/2)— to withdraw funds in the amount of USD 13,000.-- Therefore, it can in no way be demonstrated that the accused made use of a forged document in his dealings with UBS AG in Zurich, and therefore in Swiss territory, in order to deprive anyone of their property or impinge upon their other rights, or to obtain an illegitimate advantage for himself. For the sake of propriety, it must be noted that the actual forgery of the contract in question could not be prosecuted in Switzerland, anyway, since any such forgery did not take place in Switzerland. Additionally, it must be noted that the alleged document falsification cannot even be proven, for the simple reason that the signature of the plaintiff on this contract for USD 250,000, which is needed as a basis for comparison, cannot be produced. Also open to question

is exactly why the plaintiff did not make a copy of the document that he supposedly signed with and intentionally altered signature, since making such copies is standard practice in business circles. Therewith, the present legal proceeding with respect to the accusation of document falsification is to be halted.

2.2.2

A possible case of embezzlement under Art. 138 Nr.1 Para.2 StGB [Criminal Code] with reference to use contrary to contract cannot be prosecuted here because Swiss criminal prosecution authorities have no jurisdiction, since this would be a case of a criminal offense in which the actual criminal acts did not take place in Switzerland.

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Even if it were assumed that the Swiss authorities were responsible for the prosecution of an act of embezzlement in this case, it must be maintained that, in the contract in question, the loan amount is not explicitly, in writing, linked to the purpose of the loan. The purpose of the loan was apparently affirmed by the injured party on the basis of verbal agreements. Moreover, no criminal proceeding was initiated against the accused even in the Bahamas, which carried out their own criminal investigation. It must also be remarked, that the loan contract in question was executed between the plaintiff's company, namely First Capital Investments Mercantile Inc., and that of the accused, the company GVMH. It can be demonstrated with certainty that 1.5 million USD were transferred from the account of the lawyer of the accused to his account and thereafter to GVMH's account with UBS AG in Zurich, whereby it is not necessarily the case that the money was that loaned by the plaintiff. Furthermore, it is not known, where the accused deposited the 3.0 million USD, or what has happened to it. Neither could any evidence be produced that the accused was unable to repay. The circumstance under which he filed for bankruptcy in the 80s is in no way proof of this. Furthermore, it cannot be determined, wherein the sort of malicious deception required by Swiss Penal Regulations Art. 146, Para.1 StGB [Criminal Code] is supposed to have consisted, if the plaintiff had been inclined to obtain more detailed information about the project in which he wished to invest, to contact other investors or the project directors— all of which would have been expected when dealing with such a large sum as more than 3.0 million USD— and which he obviously failed to do. The mere fact that the accused, as Jay Gotlieb's neighbor, repeatedly inquired whether or not he wished to invest in a project, and boasted that he had already successfully completed business ventures with several famous persons, does not qualify as malicious deception (BGE 72 IV 128, BGE 77 IV 84f., BGE 99 IV 78, BGE 100 IV 274, BGE 119 IV 35 and BGE 126 IV 171), since in the present case would merely be a matter of a simple lie, which could have easily been discovered as such by the plaintiff with appropriate precautions. Jay Gotlieb cannot legally demonstrate that there were any deceptive intrigues, e.g. a document forgery in connection with the loan contract in question, and an structure of deceptions has not therefore been erected, if the perpetrator has merely lined up several lies one after another, but rather a structure of deceptions would only exist if these lies were of such an underhanded nature and harmonized with one another to such fine degree, that even critical victims could be so deceived. The latter is exactly not the case at present, since Jay Gotlieb arranged for no clarifications, such as are urgently necessary for such business dealings.

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Therewith the current criminal proceeding against the accused is to be halted.

2.2.3

One makes one's self legally liable of money laundering pursuant to Art.305^{bis} StGB [Criminal Code], if one undertakes an action which is capable of rendering impossible the identification of the source, the discovery, or the recovery of assets which, as the perpetrator must know or assume, derive from a crime.

In this instance, the elements of the offense of money laundering are not already demonstrated because no corresponding crime involving monetary assets could be proven on the part of the accused with respect to the loan contract in question. Additionally, it is not obvious, wherein the act, which is supposed to be capable of rendering impossible the identification of the source or the discovery of the assets in question, is supposed to consist. Even if it is assumed that the monetary assets in the accounts with UBS AG did derive from a criminal activity in connection with the loan contract in question, there can be no question in the present case of any concealment of the monetary assets, since the accused finally had transferred this amount to the contractual partner of the plaintiff, namely GVMH, whereby there can be no question of a circumvention of the discovery of these assets, and most certainly not of any circumvention of the recovery of these monetary assets, since GVMH was never dispossessed of the relevant sum of money, which condition would be essential to establishing of an act of circumvention, the more so as the plaintiff— even in a contractual sense— has no legal right to claim, that the money loaned by him to GVMH had to be kept in one specific account belonging to this company. Therewith the current criminal proceeding against the accused with reference to the accusation of money laundering is to be halted.

3.

Accordingly, the block on assets on the accounts with UBS AG in Zurich with the master file Nr. 0206-215466, registered to the company Global Village Market Holding, and with the master file Nr. 0206-889627 registered to Yank, Barry, is to be removed with the entry into legal force of this decision.

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4.

On the basis of the presented documents, the accused cannot be accused of having brought the investigation on himself in a reckless or reprobate manner, for which reason the costs will be absorbed by the state. Since the accused was required to secure the services of a defense attorney on account of the accusations of money laundering and document falsification under application of §11 Para. 2 Nr. 5 StOP, the legal fees of his defense attorney, RA Jürg Ammann, to the extent that these derive from the present case, are by right to be paid to him as compensation. According to the service fee invoices submitted by RA Jürg Ammann in the amount of CHF 12,752— (excluding VAT), the accused is to be granted compensation in the amount of CHF 9,852.—(including a VAT of 7.6% in the amount of CHF 748.75). The following expenses will not be compensated: CHF 280.-- for the 02.15.2007, CHF 80.-- for 02.15.2007, CHF 120.-- for 02.28.2007, CHF 200.—for 03.19.2007, CHF 200.-- for 05.24.2007, CHF 100.-- for 07.04.2007 CHF 100.-- for 07.31.2007, CHF 100.-- for 10.15.2007, CHF 400.-- for 10.18.2007, CHF 400.-- for 10.24.2007, CHF 200.-- for 11.06.2007, CHF 80.-- for 11.20.2007, CHF 200.-- for 12.04.2007, CHF 120.-- for 01.07.2008, CHF 120.-- for

01.21.2008 and CHF 100.-- for 01.25.2008 since compensation essentially applies under the rules only to official mandates and therefore only necessary expenses are to be compensated, and the expenses listed here result from countless, to some extent daily contacts with the accused, and in some cases multiple contacts with the accused made on the same day, which were not necessary in such an extensive fashion for the prosecution of the case, or we are dealing here with contacts that had no immediate relevance to the criminal proceeding at hand. Additional, considerable activities did not originate with the accused. No amends [compensation] will be awarded to the accused for lack of injury to his personal relationships.

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It is ordered that:

1. The investigation be halted.
2. The costs will be absorbed by the state.
3. The block on assets on the accounts with UBS AG in Zurich with the master file Nr. 0206-215466, registered to the company Global Village Market Holding, and with master file Nr. 0206-889627, registered to Yank, Barry, will be lifted with the entry into force of this decision.
4. The accused will be granted compensation for activities in the amount of Fr10,600.75 (VAT included), but no amends, to be paid at cost to the state. Possible debts with courts or investigating authorities will be calculated with this compensation or satisfaction.

The stated amount will be transferred to an account held by the legal beneficiary or his legally authorized representative with a Swiss bank or a postal account through the financial department [or cashier] of the District Attorney's Offices I-IV of Canton Zurich after this order has entered into legal force, to the extent that the legal beneficiary submits a payment order to the financial department. Otherwise, the stated amount can be obtained from the financial department [or cashier] of the District Attorney's Offices I-IV of Canton Zurich. In order to avoid unnecessary administrative procedures, determine beforehand, whether or not the decision has entered into legal force.

5. Notification to:
 - the directorate of the District Attorney's Office I of Canton Zurich for approval
 - the accused through his lawyer (named above)
 - the injured party
 - Jay Gotlieb, represented by RA Dr. oec. Daniel Fischer, c/o Advokaturbüro Fischer & Partner, Wernerstrasse 7, 8038 Zurich.

and after the **Entry into Force to:**

- the district court cashier Zurich for calculation of costs

- the financial department [or cashier] of the District Attorney's Offices I-IV of Canton Zurich
 - the Legal Services office of UBS AG, Post box, 8090 Zurich, with reference to Disp. Nr. 3
 - the coordinating office Vostra (criminal records), Post box, 8090 Zurich
6. A claim of recourse against this order to dismiss may be submitted to the Court of Appeals III [Third Court of Appeals] of Canton Zurich, Criminal Court, Hirschengraben 13/15, Postbox 2401, 8021 Zurich, within 20 days, reckoned from the day of notification, explained in writing and with the attachment of this order.

If objects or assets are released or confiscated by this order, persons thereby effected may, within 20 days of the notification of the decision, demand, through a written declaration sent to the judge of the district Zurich, Badenerstrasse 90, 8026 Zurich, a legal appraisal. If this declaration is sent without an explanatory statement, the matter will be decided on the basis of file documentation.

The injured party, the accused, as well as the person reporting the criminal offense may, within 20 days of this notification, demand, through a written declaration sent to the judge of the district Zurich, Badenerstrasse 90, 8026 Zurich, a legal appraisal of the costs and compensation. If this declaration is sent without an explanatory statement, the matter will be decided on the basis of file documentation.

District Attorney's Office I of Canton Zurich

Office B-5

lic. iur. Claudia Suter

State's Attorney

Approved on June 27th, 2008 (with seal of State's Attorney of Canton Zurich)