

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

SAM M. ANTAR, ALLEN ANTAR, and  
BENJAMIN KUSZER,

Defendants,

- and -

RORI ANTAR, SAM A. ANTAR, MICHELLE ANTAR,  
ADAM KUSZER, SAM KUSZER, SIMON KUSZER,  
ROSE ANTAR, and SAM M. ANTAR,

Relief Defendants.

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Civ. No. 93-3988  
(NHP)

APPENDIX TO THE  
DECLARATION OF RICHARD E. SIMPSON

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Dated: April 9, 1995

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Attorneys for Defendant Sam M. Antar

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UNITED STATES OF AMERICA,

- against -

MITCHELL ANTAR,

Defendant.

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: UNITED STATES DISTRICT COURT  
: DISTRICT OF NEW JERSEY

: Crim. Case No. 92-347-2

: Hon. Nicholas H. Politan,  
: U.S.D.J.

:  
: COMPLAINT IN INTERVENTION  
:

Proposed intervenor Sam M. Antar ("Antar"), by and through his attorneys, Kostelanetz & Fink, and Cole, Schotz, Meisel, Forman & Leonard, as and for his Complaint In Intervention (the "Complaint"), respectfully alleges as follows:

PRELIMINARY STATEMENT

1. Sam M. Antar ("Antar") submits this Complaint in support of his motion to intervene pursuant to Fed. R. Civ. P. 24(a), and to recover monies pursuant to N.J. Dist. Ct. Local Rule 35(c) and 28 U.S.C. §2042, and in opposition to the motion of Charles C. Carella, Trustee/Receiver, to execute on cash security pursuant to 28 U.S.C. §2044. A Memorandum of Law setting forth the basis for the intervention and the claim for relief, together with the Affidavit of Mitchell Antar ("M. Antar Aff."), sworn to June 17, 1994, and the Affidavit of Benjamin Kuszer ("B. Kuszer Aff."), sworn to June 29, 1994, are being submitted in conjunction with these papers.

THE PARTIES AND OTHERS

2. Sam M. Antar is a citizen of the State of New Jersey, having a residence at 717 Ocean Avenue, West End, New Jersey.

3. Mitchell Antar is a citizen of the State of New Jersey and a defendant in the case entitled United States v. Mitchell Antar, Crim. Case No. 92-347-2 (NHP).

4. Benjamin Kuszer is a citizen of the State of New York, and the president of NTG Management, Inc. ("NTG").

5. On information and belief, Charles C. Carella, Esq. ("Carella") is an attorney admitted to practice before this Court and is a member of the firm of Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein. On information and belief, Mr. Carella has been appointed Trustee/Receiver as part

of a judgment entered in this case on April 29, 1994, and docketed May 3, 1994.

THE FACTS

6. On or about June 11, 1992, Mitchell Antar, together with his brothers Eddie and Allen Antar, were arrested and charged with counts of securities fraud, 15 U.S.C. §§78m & 78ff(a), mail fraud, 18 U.S.C. §1341, conspiracy to commit mail fraud, 18 U.S.C. §371, and conspiracy to violate the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§1962(c) & (d). Mitchell Antar was subsequently remanded into the custody of the United States Marshall.

7. On or about June 24, 1992, a bail hearing was held before Magistrate Judge Haneke. The Magistrate Judge set bail for Mitchell Antar at \$500,000, secured by property and ten percent cash security (the "Cash Security").

8. On or about June 24, 1992, Sam Antar asked Benjamin Kuszer to help him secure Mitchell Antar's release from custody by deducting \$100,000 from the bank account of NTG, executing two Cashier's Checks in the amount of \$50,000 each (\$50,000 for Mitchell Antar's bail; \$50,000 for Allen Antar's bail), and making such checks payable to the Clerk of the New Jersey District Court for use as cash security. The monies represented partial repayment of loans which Sam Antar had made to NTG. Mr. Kuszer complied with the request, and forwarded the Cashier's

Checks to Mitchell and Allen Antar's attorneys, who then deposited them with the Clerk of the Court.

9. Mitchell and Sam Antar agreed that the monies used to secure Mitchell Antar's release were a loan with respect to which Mitchell Antar was to have a continuing obligation of repayment. Mitchell and Sam Antar also agreed that the monies would be used for the sole purpose of securing Mitchell Antar's release from custody.

10. After an eight-week jury trial, Mitchell Antar was convicted on certain counts of securities and mail fraud, conspiracy to commit mail fraud, and conspiracy to violate RICO. He was sentenced to fifty one months imprisonment and three years supervised release, a condition of which was payment of a \$3 million order of restitution.

11. By motion dated June 1, 1994, Charles C. Carella, Trustee/Receiver, moved for an Order, pursuant to 28 U.S.C. §2044 and N.J. Dist. Ct. Local Rule 35(c)(1), providing for the turnover of the \$50,000 Cash Security. Mr. Carella intends to apply these monies to Mitchell Antar's restitution obligations.

#### FIRST CLAIM FOR RELIEF

12. Proposed intervenor repeats and realleges each and every allegation contained in Paragraphs 1-11 of the Complaint as if set forth here in full.

13. The proposed intervenor has a direct, undivided and non-contingent interest in the Cash Security.

14. The proposed intervenor's interest in the Cash Security will be impaired unless he is allowed to intervene.

15. The proposed intervenor is the only party that can adequately represent his own interests in this action.

16. The Trustee/Receiver cannot claim any prejudice from Mr. Antar's intervention in these proceedings.

17. In view of the foregoing, proposed intervenor is entitled to intervene pursuant to Fed. R. Civ. P. 24(a).

#### SECOND CLAIM FOR RELIEF

18. Proposed intervenor repeats and realleges each and every allegation contained in Paragraphs 1-17 of the Complaint as if set forth here in full.

19. N.J. Dist. Ct. Local Rule 35(c)(1) provides that where monies deposited to post bond belong to someone other than the defendant, no lien may be asserted over these proceeds for the purposes securing repayment of a fine or costs levied against the defendant.

20. 28 U.S.C. § 2042 provides that any claimant entitled to any such money may, on petition to the court and upon notice to the United States Attorney and full proof of the right thereto, obtain an order directing payment to him.

21. The monies used as Cash Security were a loan used for the sole purpose of allowing Mitchell Antar to secure bail. Sam Antar never relinquished his interest over these funds.

22. In view of the foregoing, proposed intervenor Sam Antar is entitled to a return of the monies used as Cash Security.

WHEREFORE, proposed intervenor Sam Antar respectfully requests that an Order be entered:

(1) granting his motion to intervene pursuant to Fed. R. Civ. P. 24(a);

(2) recognizing proposed intervenor's interest in and right to the return of the \$50,000 Cash Security, together with applicable interest;

(3) denying, with prejudice, the Trustee/Receiver's motion to execute on Cash Security pursuant to 28 U.S.C. §2044; and

78. MICHEL  
80. ANNE T. J.  
82. AT LAW  
84. 81  
86. 81

(4) granting proposed intervenor such other, further or different relief as the Court may deem just and proper.

Dated: New York, New York  
June 30, 1994

COLE SCHOTZ, MEISEL,  
FORMAN & LEONARD

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JOANNE D LLOYD  
  
\*MEMBER N.Y. PA. & IN BARS ONLY  
  
PLEASE REPLY TO

July 5, 1994

Via Hand Delivery

Hon. Nicholas H. Politan,  
United States District Judge  
United States Courthouse and  
King Federal Building  
Fifth Floor  
50 Walnut Street  
Newark, New Jersey 07102

Re: SEC vs. Mitchell Antar  
Crim. No. 92-347-2

Dear Judge Politan:

The within letter is respectfully submitted in lieu of a more formal brief in opposition to the motion to intervene of Sam M. Antar and in further support of the Trustee/Receiver's application for issuance of a writ of execution and turnover of cash security.

As appears from the papers submitted by Sam M. Antar, no relief can be afforded him regarding the cash deposit to which the Trustee/Receiver lays proper and irrefutable claim. Specifically, defendant Mitchell Antar has executed an affidavit in which he unequivocally admits that Sam M. Antar "loaned" him the \$50,000 cash, and that he (Mitchell) signed an Affidavit of Ownership of Cash Security.

It is axiomatic that a loan of money, when made, transfers title to the borrower. As such, we may take Mitchell Antar's statement of ownership as true when made in June 1992. Mitchell Antar was the owner of the cash. See Spagnuolo v. Bonnett, 16 N.J. 546, 554 (1955).

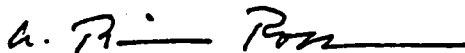
Hon. Nicholas H. Politan,  
United States District Judge  
July 5, 1994  
Page Two

Putting aside the utter dearth of documentation regarding the various loans asserted in the application to intervene, no document could be produced which would show any retention of a lien or security interest in the \$50,000 cash: None can be created in cash in the custody, possession and control of a third-party (here the clerk of the court) and none can be devised to create a paramount right to the funds beyond that of the United States and the Trustee/Receiver.

The application of Sam M. Antar to intervene, in this proceeding is at best untimely and disingenuous. It defies all semblance of logic to believe that he and his son were so ill-advised and incapable of taking any action (in the two years since delivery of the cash to the clerk of the court) to even attempt to correct the record (assuming, arguendo, that the record of ownership could have been amended - we submit it could not have been changed in light of the loan transaction now sworn to). See 7/5/94 Declaration of A. Richard Ross at Paragraphs 4-6. Only when faced with the Trustee/Receiver's June 1, 1994 application for turnover to partially satisfy restitution (and after specific discussion with Sam M. Antar's counsel regarding Mitchell Antar's restitution) does Sam M. Antar surface to assert his claim to these funds.

But query: Would a bank or other lender be afforded any greater right to these funds than the United States or the Trustee/Receiver? We submit not, as supported by U.S. v. Higgins, 987 F.2d 543, 546 fn. 3 (8th Cir. 1993): Sam M. Antar has not, indeed cannot demonstrate a legally established superior claim to the cash security. The facts of this case, moreover, are entirely sufficient and undisputed to merit immediate turnover to the Trustee/Receiver.

Respectfully submitted,



A. RICHARD ROSS  
[ARR-1798]

ARR:jrp

cc: David Kohan, Esq. (via fax)  
Paul A. Weissman, AUSA (via fax)  
Susan Steele, AUSA (via fax)  
Kathryn Keneally, (via fax)  
Marvin Gersten, (via fax)  
Richard E. Simpson, (via fax)

029

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

-----X  
UNITED STATES OF AMERICA,

- against -

MITCHELL ANTAR,

Defendant.

:  
:  
:  
: Crim. Case No. 92-347-2  
:  
: Hon. Nicholas H. Politan,  
: U.S.D.J.  
:  
: AFFIDAVIT OF  
: SAM M. ANTAR

-----X  
STATE OF NEW YORK )  
: ss.:  
COUNTY OF NEW YORK )

SAM M. ANTAR, being duly sworn, deposes and says:

1. I am a citizen of the State of New Jersey. I respectfully submit this affidavit in support of my motion to intervene pursuant to Fed. R. Civ. P. 24(a), and to recover monies pursuant to N.J. Dist. Ct. Local Rule 35(c) and 28 U.S.C. §2042, and in opposition to the motion of Charles C. Carella, Trustee/Receiver (the "Receiver"), to execute on cash security pursuant to 28 U.S.C. §2044. The statements contained in this affidavit are based on my personal knowledge.

2. I am the father of Mitchell Antar and Allen Antar. My sons were arrested in connection with an indictment brought in this Court. At the time of their arrest, their attorneys asked if I could provide assets to be used as bail to obtain their release pending trial. I agreed to do whatever I could to help my sons.

3. I made available my interest in certain real


property in Deal, New Jersey, to be used as security for their bail. I was told that this real property was not sufficient, and that additional amounts needed to be posted for each of my sons.

4. The source of funds most readily available to me at that time was in the form of a loan owed to me by a company called NTG Management, Inc. ("NTG"). My son-in-law, Benjamin Kuszer, is the president of NTG, and I knew that he would repay this loan to me at my request to respond to this family emergency. I instructed Ben Kuszer to take \$100,000 owed to me by NTG and to make it available to my sons' attorneys for the purpose of securing their release on bail. I understand that \$50,000 was applied to Mitchell's bail, and the balance was applied to Allen's bail.

5. I considered these funds to be mine at all times. The funds were owed to me by NTG, and I directed that the funds be used specifically and solely to secure my sons' release on bail. I did not lend these funds to either of my sons. Rather, it was always my understanding that this money was mine.

6. I understand that my son Mitchell has stated that he understood that the money that was posted in connection with his bail was a loan from me. Perhaps he believed this because he felt that he had an obligation to repay this money to me. I never thought the Mitchell owed me anything, however. I trusted that my son would not violate his bail obligations, and I always believed that this money would be returned to me by the Court.

7. I understand that the Receiver has called the Court's attention to documents that I executed in connection with posting real property for my sons' bail. I executed the documents that my sons' attorneys told me were necessary. I was never informed that I was required to execute any documents in connection with the money that I provided. I was told by my sons' attorneys that money was needed, and I made arrangements to have money provided. I never intended, however, to give up my rights to this money. It was and is my \$50,000 that was posted in connection with Mitchell Antar's bail. I respectfully ask this Court to direct that this money be returned to me.

  
 \_\_\_\_\_  
 SAM M. ANTAR

Sworn to before me  
 this 31st day of August, 1994

  
 \_\_\_\_\_  
 Notary Public

**JO ANN PROVINO**  
 Notary Public, State of New York  
 No. 43-4713069  
 Qualified in Richmond County  
 Term Expires April 30, 1996

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**U.S.A. v ANTAR June 25, 1993 Trial Transcript, Volume 8**

**PAGE 1 TO PAGE 141**

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**CONDENSED TRANSCRIPT AND CONCORDANCE  
PREPARED BY:**

**Stanley B. Rizman, C.S.R.  
Official Court Reporter  
Newark, NJ 07102  
Phone: 201-643-2456**

Page 8.31

(1) A Mitchell was like a brother to me.  
 (2) Q What about Allen?  
 (3) A Allen and my brother Mark were the best of friends.  
 (4) Q Did you discuss the Crazy Eddie business with the other  
 (5) Antars at this time? We're talking now about the early '70s.  
 (6) A Yes, I did.  
 (7) Q I'm sorry. We're in the early '80s by now.  
 (8) A During both periods I did.  
 (9) Q All right. Did they include you, to your knowledge, in all  
 (10) of their discussions about the business?  
 (11) A No. Sometimes they would huddle up away from me. They'd  
 (12) go upstairs. They'd go into another room. They'd ask me to  
 (13) leave. Not in all their discussions.  
 (14) Q Do you know whether at this time - now we're in a period  
 (15) after you leave your parents' home. Do you know whether Sam  
 (16) M. and Eddie Antar are still taking cash out of the business?  
 (17) A Yes.  
 (18) Q How do you know that?  
 (19) A Because I was assisting them during the Christmas season  
 (20) taking cash out of the business for a period of years.  
 (21) Q What would you do, exactly?  
 (22) A Well, the period of time that I'm going to refer to is  
 (23) basically from around the Christmas of 1978 to about the  
 (24) Christmas of 1982.  
 (25) What happened was that I would go to the various

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(1) stores and pick up the store receipts and I would bring it to  
 (2) the home of Sam M. Antar, Eddie's father. Sometimes to even  
 (3) Eddie's house across the street. And we would count it through  
 (4) the night. We packaged the deposits. Pulled out whatever they  
 (5) needed for themselves. And whatever was left over went to pay  
 (6) bills.  
 (7) Q How long did this go on? I'm sorry. Did you say?  
 (8) A This was a period of years. I'm referring to basically the  
 (9) Christmas of 1978 to the Christmas of nineteen-seventy - 1982,  
 (10) approximately.  
 (11) Q Do you recall how much money you might pick up at a  
 (12) particular Christmas season all together?  
 (13) A Into the millions. As much as -  
 (14) Q Do you recall - did they ever give you any of the money?  
 (15) This is all cash. Is that correct?  
 (16) A I just want to correct myself. The beginning year was  
 (17) December of 1979. Not December of 1978.  
 (18) Q That is when you moved out of your house, your parents'  
 (19) house?  
 (20) A Yes.  
 (21) Q We're talking about all cash?  
 (22) A Yes. We're talking about the times I went to the stores  
 (23) and helped them skim money and I brought it to the house.  
 (24) Q Did they ever give any of it to you?  
 (25) A Sometimes.

Page 8.33

(1) Q Did you ever keep any - how much did they give you?  
 (2) A Sometimes 5,000, sometimes 10,000. Depended how they  
 (3) left  
 (4) that day.  
 (5) Q Did you ever keep any of it without telling them?  
 (6) A No.  
 (7) Q Do you know what happened to the rest of the money?  
 (8) A Yes.  
 (9) Q What?  
 (10) A They kept it for themselves. Some of it they said went to  
 (11) Israel in some bank accounts that they had.  
 (12) Q Now, you said you started this in 1979. Do you know  
 (13) approximately how much was skimmed as a total,  
 (14) approximately,  
 (15) in that particular year, skimmed from the stores?  
 (16) A Approximately \$3 million.  
 (17) Q Where do you get that figure from?  
 (18) A From discussions with the Antar family. I used to be  
 (19) there. Sam M. Antar and his immediate family used to be there.  
 (20) There would be discussions about the business. Sometimes the  
 (21) amount of money would come up as to how much they  
 (22) skimmed.  
 (23) That is what I recall.  
 (24) Q Do you recall other discussions among the family about  
 (25) making Crazy Eddie into a public company?  
 (26) A Yes.  
 (27) Q What was the general subject matter of those discussions?

(25) A Well, they had this goal eventually of becoming a public

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(1) company.  
 (2) This was from around early 1980. Maybe a little  
 (3) before or a little after, but approximately that time. They  
 (4) knew as a public company - from my discussions with them,  
 (5) they  
 (6) related to me they knew as a public company that you have to  
 (7) show earnings. You can't not.  
 (8) Q Well, let me stop you there.  
 (9) Did they tell you why they wanted to become a public  
 (10) company or make Crazy Eddie into a public company?  
 (11) A Yes. To make money.  
 (12) Q Specifically by doing what?  
 (13) A By selling stock. Selling shares of ownership to the  
 (14) public.  
 (15) Q Did though discuss specifically - tell us who were in  
 (16) these discussions now. Which people are having these  
 (17) discussions?  
 (18) A Well, the people varied from discussion to discussion. I  
 (19) don't recall exactly who was there during every single  
 (20) discussion. Sam M. Antar would be there a lot of times. Eddie  
 (21) Antar. His brother Mitchell would sometimes be there. Allen  
 (22) would sometimes be there. Ben Kuszar would be there.  
 (23) Sometimes their wives would be there. It varied from time to  
 (24) time.  
 (25) I only lived by next door. I stopped by and would sit  
 (26) down and talk.

Page 8.35

(1) Q Ben Kuszar is the -  
 (2) A Allen Antar - Ben Kuszar is the brother-in-law of Eddie  
 (3) Antar and Mitchell Antar and Allen Antar.  
 (4) Q These people, at various times did they discuss steps they  
 (5) might take in order to go public?  
 (6) A Yes, they did.  
 (7) Q What do you recall they discussed on those lines?  
 (8) A Well, to go public you have to show more profits, because  
 (9) the more profits that you show, the higher you can sell the  
 (10) stock for and the more money you can make.  
 (11) But we were skimming money and there wasn't any  
 (12) profits being showed because we didn't want to pay income  
 (13) taxes, corporate taxes or personal taxes.  
 (14) So towards going public - they didn't know what year  
 (15) they would go public or even if they would eventually - if  
 (16) they would actually pull off going public.  
 (17) Towards preparing to go public, they would skim out  
 (18) less money each year to show the company was growing more  
 (19) and  
 (20) more in its profits. To show the company was actually faster  
 (21) than it was actually growing in its profits.  
 (22) Q How would that tend to show that the company was grow  
 (23) faster than what it was actually growing?  
 (24) A If you skim less money, each year, you are showing a  
 (25) greater amount of profits that you weren't showing before.  
 (26) Q What about the rate of growth?

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(1) A The rate of growth gets accelerated. If you skim out in  
 (2) 1979, say, \$3 million, your tax return didn't show that \$3  
 (3) million in profits. If you skim out, say, \$2 million in the  
 (4) next year, automatically you're getting a \$1 million boost on  
 (5) your profits without doing anything. All things being equal.  
 (6) Q What, in fact, happened with the skimming of the cash from  
 (7) the stores after 1979?  
 (8) A It got less and less each year.  
 (9) Q Do you have any knowledge as to the amounts that were  
 (10) skimmed in total, approximately, in subsequent years?  
 (11) A Yes, I do. Approximately.  
 (12) Q Again, that is from what?  
 (13) A From 1979, I recall.  
 (14) Q What is the source of the knowledge?  
 (15) A From discussions with Sam M. Antar and his immediate  
 (16) family. With the others that I previously described.  
 (17) Q You said 1979 you thought it was approximately three  
 (18) million?  
 (19) A Yes.  
 (20) Q In subsequent years?  
 (21) A It was approximately two and a half to two million in 1980.  
 (22) About a million and a half in 1981. And the Christmas of 1982  
 (23) I think it was less than \$1 million.  
 (24) Q What about 1983?  
 (25) A They didn't skim for their own personal pockets. The only

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**U.S.A. v ANTAR June 18, 1993 Trial Transcript, Volume 4**

**PAGE 1 TO PAGE 236**

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**CONDENSED TRANSCRIPT AND CONCORDANCE  
PREPARED BY:**

*Stanley B. Rizman, C.S.R.  
Official Court Reporter  
Newark, NJ 07102  
Phone: 201-643-2456*



Page 4.172

- (1) Q Did you lose those positions when the company was taken over by new management?
- (2) A Yes.
- (3) Q Also, let me direct your attention to 1978 and ask you whether you had a medical problem in that year?
- (4) A I had a heart attack in November 1978.
- (5) Q Were you out of work for a period of time?
- (6) A Approximately two to two and a half months.
- (7) Q Did you then resume your work?
- (8) A Yes.
- (9) Q All right. Let me get your attention back to the period before the company went public starting in the early '70s. Who did you report to when you were handling the books of Crazy Eddie?
- (10) A To Sam and Eddie.
- (11) Q Sam?
- (12) A Sam M.
- (13) Q We want to distinguish between Sam M. and Sam E. Sam M. Antar and Eddie Antar.
- (14) A Eddie Antar.
- (15) Q At the time you were hired to do the books, what instructions - what particular instruction were you given, if any?
- (16) A Did you want me to explain what my duties were?
- (17) Q First tell us what your general duties were?

Page 4.173

- (1) A Make deposits, pay the vendors, make the payroll - do you want me to tell you how - what happened?
- (2) Q We will get to that in a second. Your general duties were to make deposits in the bank, right?
- (3) A Right.
- (4) Q That would be Crazy Eddie money; correct?
- (5) A Yes.
- (6) Q You say "paid vendors." Who?
- (7) A Make out the clerks to people who sell us merchandise.
- (8) Q Finally you said "make the payroll." What did you mean by that?
- (9) A Actually take the cash, put it in envelopes to pay the employees.
- (10) Q Were the employees paid entirely in cash?
- (11) A With an exception. Yes.
- (12) Q Eventually were they paid partly in check and partly in cash?
- (13) A Yes.
- (14) Q Were you given any particular instructions at the time you were hired in connection with how you were going to do these duties in terms of how to handle the receipts, the money that came in from Crazy Eddie?
- (15) A I was told to hold back - in other words, I'll give you an example. Say \$1,000 for the day in cash. Hold that part of that be it for payroll or for personal expenses for the

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- (1) officers.
- (2) Q Wait a second. Let's take it step by step.
- (3) First of all, what kinds of payments did customers make at Crazy Eddie for products? What form were the payments in?
- (4) A They came in the form of cash, checks and charges.
- (5) Q Let's focus on the cash. You told us you received instructions concerning holding back a portion of the cash?
- (6) A Correct.
- (7) Q Who gave you those instructions?
- (8) A Sam or Eddie or possibly the two of them together. You're talking about something that happened 20 years ago.
- (9) Q I'm aware of how long ago it was, Mr. Antar. I want you to listen to -
- (10) MR. ARSENAULT: Can we make sure we're clear on the time frame?
- (11) Q Yes. I'm beginning -
- (12) A Beginning 1973.
- (13) Q 1973?
- (14) A Yes.
- (15) Q And up until the period of the public offering. Actually, we'll go '73 to '78. Now, with respect to the cash that you received these instructions about, this was cash sales receipts, correct?

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- (1) A Right.
- (2) Q Tell us what you were instructed to do with the cash that came into the Crazy Eddie stores that was delivered to you?
- (3) A To hold back half, approximately half of that. Only deposit what was necessary to cover whatever checks were outstanding.
- (4) Q With the portion that you held back, meaning you wouldn't deposit it, what were you told to hold it back for?
- (5) A We use it for payroll and other expenses and for whatever they wanted it for.
- (6) Q When you say "for whatever they wanted it for" -
- (7) A Meaning Sam M. or Eddie.
- (8) Q When you say "for personal expenses," what do you mean?
- (9) A For their personal expenses.
- (10) Q Take us through the process, physically, of how store receipts would be received by you and first tell us how you would handle the store receipts that were to be deposited.
- (11) Then tell us how you would handle the store receipts that were held back. Just assume a day and walk us through.
- (12) A One of these store managers would drop off a bag that held all the cash, checks and charges that were received that day.
- (13) Q That would be credit card charges?
- (14) A Credit card charges, yes.
- (15) Q What would you do with the charges?
- (16) A I would make a tape for the charges?

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- (1) A Make a reconciliation statement for it so it would go into the banks to get the money for the charges. The checks - we'd stamp the backs of.
- (2) Q Speak up, Mr. Antar?
- (3) A The checks - we would endorse the backs of, deposit. The cash would be counted out. Whole back half of it or approximately half of it to the nearest round thousand, whatever it was, and then deposit the rest.
- (4) If there were extra checks coming in through the bank I'd deposit a little bit more and not hold back as much.
- (5) Q With respect to the portion of the cash that you were going to deposit, what would you do with the cash?
- (6) A I'd hold it. Use it for payroll.
- (7) Q Mr. Antar, you misunderstood my question. The part of the cash that you were going to deposit, what would you physically do with it?
- (8) A Make a deposit slip and deposit it into the bank.
- (9) Q Would you deposit into the bank personally?
- (10) A Most of the time yes.
- (11) Q What would you do with the deposit slip?
- (12) A Use it as a deposit slip.
- (13) Q Did you give it to somebody? Did you keep a record of a deposit slip?
- (14) A At the very beginning, no. We didn't have bookkeepers at the time.

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- (1) Q But eventually?
- (2) A Eventually, when we got bookkeepers I'd give the copy of the deposit slip to the bookkeeper with the tape showing the amount of checks as would be done with the deposit slip, also, and the amount of the charges.
- (3) Q So the bookkeeper would receive the checks, the charge slips and that portion of the cash that you would deposit; correct?
- (4) A Yes.
- (5) Q Is it that figure that would show up on the books and records of the company as showing the gross receipts for the day?
- (6) A Yes.
- (7) Q That half of cash, approximately, that you held back, that did not appear on the books and records of the company, correct?
- (8) A No. It did not appear.
- (9) Q What did you do with it physically? What did you do with it?
- (10) A I put it away.
- (11) Q Where?
- (12) A In the house. In an attache case. Whatever. In a drawer.
- (13) Q And was cash received by you from the stores on a daily basis?
- (14) A Yes.

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- (1) Q How long - how many days would you generally keep the cash
- (2) in your house accumulating before the next step?
- (3) A Could be a week. It could be a month. It could be four weeks - five weeks, six weeks.
- (4) Q And what would happen with the cash after it accumulated for this period of time?
- (7) A I would either drop it off at Sam M.'s house or one of the boys would pick it up. Either Mitchell or Ben. Ben Kuzser.
- (9) Q When you say "Mitchell," do you mean Mitchell Antar?
- (10) A Mitchell Antar.
- (11) Q Now, with respect to the cash that did not appear on the books of the company. Did you keep any record of your own of that amount of cash?
- (12) A Yes.
- (13) Q Where was that kept?
- (14) A We destroyed them. I destroyed them.
- (15) Q Until they were destroyed, where did you keep that record?
- (16) A In my home.
- (17) Q So you had a second set of books?
- (18) A Yes.
- (19) Q You said - tells us again. Who would pick up the money if you didn't deliver it to Sam M.'s house?
- (20) A Either Mitchell, Mitchell Antar or Ben Kuzser.
- (21) Q How would you arrange with them? Was there a scheduled pick up?
- (22) A No.
- (23) Q Or they would just call?
- (24) A Call up.
- (25) Q On the occasions you delivered the cash to Sam M.'s house, where did it go? Did you see where it was put?
- (26) A Where he put it that particular moment?
- (27) Q Yes.
- (28) A He had a false ceiling in his walk-in apartment. He would put it inside the false ceiling.
- (29) Q What was the reason that the cash was being held back?
- (30) A Not to pay taxes on it.
- (31) Q You told us that the cash that was - are you familiar with the term skimming? Yes?
- (32) A Yes.
- (33) Q Essentially?
- (34) A Skimming.
- (35) Q You skimmed cash. Correct?
- (36) A Correct.
- (37) Q Now, let's talk about the uses for which this skimmed cash was put. You said that you would take a portion of the skimmed cash and use it for payroll?
- (38) A Correct.
- (39) Q Explain to the jury what you mean by that?
- (40) A If someone was supposed to get \$500 a week?
- (41) A He would get \$500 net a week. Then he would be booked for

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- (1) \$500 gross or sometimes less. The tax would be paid on the amount booked.
- (2) Q Then the difference between the amount booked and the amount net was paid in cash?
- (3) A In cash. After we started the checks. Prior to the checks, we just gave them cash.
- (4) Q Then after the checks, you would pay part in cash and part by checks?
- (5) A Yes.
- (6) Q When the time came for the company to pay - to issue W-2s for income tax purposes, which figure did you put on the employee's W-2?
- (7) A The figure that is shown in the payroll book.
- (8) Q Which was the figure on the check but not including the cash?
- (9) A Not including the cash.
- (10) Q Now, a part from the cash that you used for payroll, what was the other cash used for?
- (11) A Some of the uses were fixing the house, expenses for buying clothing, merchandise and whatever.
- (12) Q Did you use it for fixing the house or buying clothing or merchandise?
- (13) A No.
- (14) Q Tell us how you would distribute the cash apart from what you have already described in terms of having it picked up

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- (1) after it was accumulated?
- (2) A Well, Eddie might call or Debbie might call or Sam might call. Sam M. might call and say Allen needs so much for this or Allen Antar.
- (3) Eddie would say Debbie needs so much money for this.
- (4) At one time he just made a blanket statement, "Anything that Debbie needed, just give her whatever she wants."
- (5) Sometimes his mother-in-law would ask for it for Debbie.
- (6) Q Besides Allen and Eddie and Sam M. and Debbie, who else would get cash for incidentals?
- (7) A On that basis.
- (8) MR. ARSENAULT: For clarity, Debbie Rosen we're talking about?
- (9) A I'm sorry. Debbie Rosen Antar.
- (10) Q I'm sorry. Debbie Rosen.
- (11) A Yes.
- (12) Q So would you, personally, give money to Allen, cash money to Allen?
- (13) A I've done it.
- (14) Q Mitchell?
- (15) A Yes.
- (16) Q Debbie Rosen?
- (17) A Yes.
- (18) Q Then you also brought the cash over to Sam M.

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- (1) A Yes.
- (2) A Also cash to Eddie, also.
- (3) Q And to Eddie as well?
- (4) A Yes.
- (5) Q That is Eddie Antar, the defendant?
- (6) A Eddie Antar.
- (7) Q You, yourself, would you get paid off the books?
- (8) A Yes.
- (9) Q Approximately how much were you paid off the books during this period of, let's say, in the mid-'70s?
- (10) A It was \$150 a week, every week.
- (11) Q That was in addition to your payroll check?
- (12) A My payroll check, right.
- (13) Q Did you report the cash off the books as payments you received for income tax?
- (14) A No.
- (15) Q Can you estimate for us, by the way, how much cash a week Debbie Rosen Antar used to pick up from you or used to get from you?
- (16) A During -
- (17) MR. ARSENAULT: Judge, we're covering a long period of time.
- (18) Q Let's say from the mid-to late '70s?
- (19) A I know we had her, as far as the payroll was concerned, it was \$1500 a week. Addition - I can't even remember.

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- (1) MR. KROVATIN: I can't hear him.
- (2) Q You got to use the mike.
- (3) THE COURT: Move your chair closer. Help him.
- (4) Somebody help him get the chair closer. We may need a lower
- (5) get it right in front of your mouth. It won't bite you. You won't get electruted. Modern technology.
- (6) THE COURT: Go ahead.
- (7) Q All right. I'm sorry. Mid-to late '70s. You said, first of all, Debbie Rosen Antar was on the payroll for 1500 a week.
- (8) Was that 1500 on the books or 1500 cash?
- (9) A 1500 was the cash.
- (10) Q So that was unreported?
- (11) A Yes.
- (12) Q Did she actually work at Crazy Eddie's?
- (13) A No.
- (14) Q You say in addition to that there were other sums Debbie Rosen Antar would get from time to time?
- (15) A Yes.
- (16) Q Would you tell us the magnitude of the sums? How much at any one time did she get?
- (17) A It could have been as low as a couple of thousand - couple of hundred dollars even or it could have been as much as 15 or 20 \$18,000.
- (18) Q During this period, let's say, from 1973 to the early 1980s there were additional stores being added; correct?

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- 066

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- (1) Q When you say "quite a bit of money," what do you mean?
- (2) A A little over - maybe \$500,000.
- (3) Q This is in cash?
- (4) A Cash.
- (5) Q So what was the discussion that you and Sam M. Antar had concerning taking the money to Israel?
- (6) A He was going to take it over to Israel.
- (7) Q What was the discussion?
- (8) A That was it. He would take some money over to Israel.
- (9) There wasn't a long discussion or anything like that.
- (10) "Would you like to go to Israel?"
- (11) I said, "Okay."
- (12) Q Let's take it a little more step by step. He said to you what?
- (13) A Oh, I can't remember now.
- (14) Q In substance. Did he make a request of you?
- (15) A I imagine - let me tell you what I did.
- (16) Q First tell us what did he ask you?
- (17) A He asked me to pack up the money to take it to Israel.
- (18) Q Did he give you some of the money?
- (19) A No. No. I had it.
- (20) Q Did you give him some of the money?
- (21) A I gave him half of it.
- (22) Q How did you pack up your half to take to Israel?
- (23) A I packed them both up into manila envelopes. \$100 bills.

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- (1) Q I'm sorry. What did you say?
- (2) A In hundred dollar bills.
- (3) Q Did you accompany Sam M. Antar to Israel?
- (4) A Yes.
- (5) Q With your wives?
- (6) A Yes.
- (7) Q Where did you carry the hundred dollar bills that you had?
- (8) A In my overnight bag.
- (9) Q Where did he carry his?
- (10) A In his overnight bag.
- (11) Q Before you left with him, what discussion, if any, did you have with him concerning how you were going to get the money in?
- (12) A I had been through the airport before. I noticed there are signs there that say you had to declare anything over \$10,000.
- (13) If you were carrying anything more than \$10,000. I mentioned that to him.
- (14) He said, "Don't worry. El Al doesn't check your bags."
- (15) He seemed to know that you could just carry money out.
- (16) Q In fact, were you able to carry money with Sam M. Antar into Israel?
- (17) A Yes.
- (18) Q Did you get any compensation for that, by the way?
- (19) A We got a trip to Israel. Me and my wife.

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- (1) Q What airline did you fly?
- (2) A El Al.
- (3) Q Do you remember where you landed?
- (4) A In Tel Aviv.
- (5) Q Do you remember the name of the airport?
- (6) A Oh, Ben-Gurion.
- (7) Q Ben-Gurion Airport. What time?
- (8) A Excuse me. Could I have some water, maybe?
- (9) Q Sure.
- (10) (Water handed to the witness.)
- (11) Q Okay. What time of day did you and Sam M. Antar arrive in Israel?
- (12) A Early morning.
- (13) Q What did you and your wives do after you had gotten through boarder customs?
- (14) A We walked through customs. We didn't have anything to declare.
- (15) Q Except for cash?
- (16) A We didn't declare that, either. We just walked through. We took a cab to Bank Leumi.
- (17) Q What did you do when you arrived at Bank Leumi?
- (18) A Left the wives outside. Went inside with Sam M. I think it was the third floor. Narrow building. Narrow entranceway.
- (19) We met a gentleman named Dov Nivon. Took the money. They counted it. I guess gave Sam a deposit slip for it.

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- (1) Q Then what did you do?
- (2) A We went on to Jerusalem and stayed. That year it was the Hilton Hotel.
- (3) Q How much longer did you spend in Israel at that time?
- (4) A Probably about two weeks. Ten days to two weeks.
- (5) Q Mr. Antar, do you, yourself, have an account in Israel?
- (6) A No.
- (7) Q Did there come a time, again, in the early '80s when you observed an Israeli bank account signature document?
- (8) A Yes.
- (9) Q Tell us the circumstances of that. Where?
- (10) A Yes.
- (11) Q Where and when did that happen?
- (12) A We had a walk-in apartment in Sam M.'s house. Sitting around a kitchen table. He took out a bank resolution and asked Ben and Mitchell to sign it. I don't remember if Eddie signed it then. But - a bank resolution. He signed it also and Rose signed it.
- (13) Q When you say "Ben," you mean who?
- (14) A Ben Kuszer.
- (15) Q That is -
- (16) A Sam M.'s son-in-law.
- (17) Q When you say "Mitchell," you mean who?
- (18) A Mitchell Antar.
- (19) Q Did you see Mitchell Antar sign the document in front of

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- (1) you?
- (2) A Yes.
- (3) Q Where did Eddie and Deborah Rosen Antar live relative to Sam M. Antar?
- (4) A Diagonally across the street.
- (5) Q Where would this be?
- (6) A East Third Street between - I'll give you the address.
- (7) 2148 was Sam's address. I don't remember what Eddie's address was. On the opposite side of the street.
- (8) Q In Brooklyn?
- (9) A Yes.
- (10) Q Do you recall actually seeing the document that was signed?
- (11) A Yes.
- (12) Q I'm going to show you -
- (13) MR. CHERTOFF: Perhaps 1011 we reached an agreement on.
- (14) Q Let me show you the Exhibit IBR-1100 1011. Let me ask you if you recognize - some of the signatures are blocked out. But let me ask you if you recognize the four signatures over there?
- (15) A I recognize three of them. Ben Kuszer, Mitchell Antar and Eddie Kelso.
- (16) Q Eddie Antar?
- (17) A Eddie Antar.
- (18) Q Do you recognize Debbie's?

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- (1) A Debbie's I didn't see that often, so I can't.
- (2) Q You recognize Ben Kuszer's, Mitchell's and Eddie Antar's signatures?
- (3) A Yes.
- (4) Q Also, let me - as long as I've got this here, I'd like to show you where it says their passport number and country. If you would compare the passport number beginning with H 1 -
- (5) A 30334.
- (6) Q Does that appear on this document?
- (7) A Yes.
- (8) THE COURT: What are you comparing?
- (9) MR. CHERTOFF: I'm comparing it to Exhibit 709 in evidence, your Honor, and IBR-1011.
- (10) THE COURT: Both the same passport numbers?
- (11) MR. CHERTOFF: Yes, they are the same passport numbers, your Honor.
- (12) Q Were you asked to sign this?
- (13) A No.
- (14) Q Let me show you Government Exhibit - IBR-913, IBR-914 and IBR-915 for identification.
- (15) With respect to IBR-913A for identification, do you see a signature on A in the lower right-hand corner?
- (16) A It's Ben Kuszer.
- (17) Q Is that a deposit slip?
- (18) A Yes.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CIVIL ACTION NO. 93-3988

SECURITIES AND EXCHANGE COMMISSION :

Plaintiff, :

-v- :

Deposition of:

SAM M. ANTAR, ALLEN ANTAR and :  
BENJAMIN KUSZER, :

SAM M. ANTAR

Defendants, :

-and- :

RORI ANTAR, SAM A. ANTAR, MICHELLE :  
ANTAR, ADAM KUSZER, SAM KUSZER, :  
SIMON KUSZER, ROSE ANTAR and SAM :  
M. ANTAR, :

Relief Defendants. :

x

T R A N S C R I P T of the deposition in  
the above-captioned matter as taken by and before  
JOANNE M. CARUSO, a Certified Shorthand Reporter and  
Notary Public of the State of New Jersey, at the  
Federal Courthouse Building, Newark, New Jersey, on  
Tuesday, January 11, 1994, commencing at 10:15 a.m.

A P P E A R A N C E S :

UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
BY: RICHARD E. SIMPSON, ESQ.,  
and  
RICHARD G. WALLACE, ESQ.,  
For the Plaintiff.

FEDERAL COURT REPORTERS  
P.O. BOX 22363  
NEWARK, NEW JERSEY 07101

1 are different.

2 Is that the problem?

3 THE WITNESS: I have no problem with  
4 that.

5 I have a problem with dates. Eddy my  
6 brother did not work for us until 1972.

7 Q Okay.

8 THE WITNESS: He's going back to 1969.

9 Q Let me rephrase the question then.

10 A Okay.

11 Q At any time from 1972 to 1979, did you  
12 become aware that your brother Eddy kept in his house  
13 currency that had originated from Crazy Eddie?

14 A Yes.

15 Q And how did you become aware of that  
16 fact?

17 A He was in charge of the business.

18 Q When you say "he was in charge of the  
19 business," do you mean that Uncle Eddy was in charge  
20 of the entire business?

21 A The entire financial part of the business.

22 Q And as a result of his responsibility for  
23 the financial part of the business, did you become  
24 aware that your brother Eddy kept in his house  
25 currency that had originated from Crazy Eddie?

1 A Yes.

2 Q And how did you become aware of that?

3 A How did I become aware of it?

4 Q Yes.

5 A It was part of our operation.

6 Q Can you describe how it was part of your  
7 operation?

8 A From 1972 to 1976, we set money aside. Some of  
9 it was used for payroll, some of it was used for  
10 purchasing merchandise and some of it was kept on the  
11 side.

12 Q Can you describe the process by which  
13 money was kept aside?

14 A You will have to ask Uncle Eddy for that.

15 Q Did you ever have any conversations with  
16 Uncle Eddy about how money was kept aside?

17 A Pardon me?

18 Q Did you have any conversations with your  
19 brother Eddy about the process by which money was set  
20 aside?

21 A I may have.

22 Q Do you recall, as you sit here today, any  
23 of those conversations?

24 A No.

25 Q When you say that you may have had

1 A Same time everybody else learned about it.

2 Q And how did everybody else learn about  
3 it?

4 A Everybody that was involved, me, Uncle Eddy,  
5 Solomon and Eddie, and of course probably filtered  
6 down to his son, Sam E., and that was it.

7 Q And it's your testimony that after 1976,  
8 to your knowledge, no cash was set aside from Crazy  
9 Eddie operations?

10 A Not to my knowledge.

11 Q Now, with respect to the cash that laid  
12 there, where was that cash maintained while it was  
13 laying there?

14 A Most of it was maintained in my home.

15 Q And how did it come about that the cash  
16 was maintained in your home?

17 A Very simple. It was in my home.

18 Q You testified that your brother Eddy was  
19 in charge --

20 A Yes, but he would give it to me or give it to  
21 my son Eddie.

22 Q And then your son Eddie would give it to  
23 you?

24 A Sometimes he would and most of the time, yes, I  
25 think he did.

1 Q And where was the cash maintained in your  
2 home?

3 A In my home.

4 Q Was there a particular location in your  
5 home?

6 A Yeah. In the ceiling of one of the bedrooms.  
7 See that up there?

8 Q What was the largest amount of cash  
9 maintained in your home at a single point in time?

10 A I don't know. About maybe \$3 million, a  
11 million dollars, I don't know.

12 Q Let me try to clarify that.

13 When you say you don't know, do you have  
14 a recollection that the amount maintained at a single  
15 point in time was in excess of a million dollars?

16 A Yeah. Sometimes maybe \$50,000 less, \$50,000  
17 more, \$100,000 less, \$100,000 more.

18 Q How did it come about that the amount of  
19 cash in your home would become \$100,000 less?

20 A In the earlier days it would become less  
21 because of the fact that we were doing cash  
22 purchasing, but after we went legitimate, we didn't  
23 need it.

24 Q Okay.

25 I'm directing my questions to basically



1 A No.

2 Q Did you have any conversations with your  
3 brother about opening up an account at Bank Leumi?

4 A No.

5 Q Did you have any conversations with  
6 Solomon Antar about opening up an account at Bank  
7 Leumi?

8 A Yes.

9 Q And did those -- did that conversation or  
10 those conversations take place in 1979?

11 A Yes. Maybe 1978.

12 Q Do you recall a specific conversation  
13 with Solomon?

14 A I don't know exactly the conversation, but we  
15 were -- in 1978 in Israel we attended a seminar  
16 telling us anyone that has cash, leave it in Israel,  
17 it's like being in Switzerland.

18 That's it.

19 Q Was the conference held at the Hilton  
20 Hotel in Israel?

21 A No, the Hilton Hotel in Jerusalem.

22 Q Oh, okay.

23 After the conference, did you have any  
24 conversations with Solomon about opening up --

25 A No.

1 maintained in your home?

2 A No.

3 Q From 1976 to 1979, did the cash that you  
4 maintained in your home remain in your home?

5 A Yes.

6 Q You didn't put it in a bank account or  
7 anything?

8 A No.

9 Q Did you discuss with anyone, other than  
10 Solomon, the subject of opening a bank account at Bank  
11 Leumi?

12 A No.

13 MS. KENEALLY: Objection, form.

14 Q And did you say that the seminar was in  
15 1978 or 1979?

16 A I believe '78, I don't know. Somewhere --  
17 before, maybe it was '79, the beginning of '79, I  
18 don't know. If you look up my passport, you'll find  
19 it.

20 Q When you opened the account at Bank  
21 Leumi, did you speak to any particular employee of  
22 Bank Leumi?

23 A Pardon me?

24 Q Let me rephrase it.

25 When you opened account 31332 in 1979,

1 was there a particular employee of Bank Leumi with  
2 whom you spoke to open the account?

3 A No.

4 Q When you opened the account in 1979, did  
5 you present them with the \$25,000 in cash and ask that  
6 they deposit that into the account?

7 A Yes.

8 Q Did they say anything in response?

9 A Pardon me?

10 Q When you asked them to deposit the  
11 \$25,000 in cash into your account, did the Bank Leumi  
12 employee say anything in response to that request?

13 A I think she was very happy.

14 Q Did she say anything that you can recall?

15 A Not that I can recall.

16 Q When you made the trip from the United  
17 States to Israel, did anyone travel with you?

18 A Pardon me?

19 Q Did anyone accompany you on your trip  
20 from the U.S. to Israel?

21 A Oh, yes.

22 MS. KENEALLY: Objection to form.

23 Q Who was that?

24 A My mother, may she rest in piece, Bennie's  
25 mother, may she rest in piece, Solomon Antar, myself,

1 and my wife.

2 Q Other than your wife, did anyone else  
3 making the trip know that you were carrying \$25,000?

4 A Yes.

5 Q And who knew that you were carrying  
6 \$25,000?

7 A I gave each one \$5,000.

8 Q And so each person carried \$5,000 each?

9 A Yes.

10 Q When you opened the account at the Hilton  
11 Hotel branch, was anyone present with you?

12 A No.

13 Q I think you mentioned that Rose, your  
14 wife, was also a signatory to the account?

15 A Pardon me?

16 Q I think you mentioned earlier that your  
17 wife, Rose, was also a signatory to the account?

18 A Yes.

19 Q Did she sign the account documents at the  
20 same time you did or did she sign them at a different  
21 time?

22 A I think she might have signed it later or I  
23 might have taken it upstairs to her. She was in the  
24 hotel.

25 Q And you were staying at the Hilton Hotel

1 in Tel-Aviv at that time?

2 A Yes.

3 Q After you opened account number 31332,  
4 did you have any conversations with Eddie pertaining  
5 to a bank account in Israel?

6 A Yes.

7 Q And when did that conversation or those  
8 conversations take place?

9 A I really don't know, but it had to be between  
10 October 30 to April 10th, sometime.

11 Q Okay.

12 Why did it have to be between those two  
13 dates?

14 MS. KENEALLY: Let the record reflect  
15 that the witness has been looking --

16 A Because that's what the record shows.

17 MS. KENEALLY: -- at plaintiff's exhibit  
18 nine.

19 Q And you said that's what the record  
20 shows?

21 A The record shows that I must have spoken to him  
22 then because we decided that we would take all the  
23 money over there, little by little.

24 Q Okay.

25 When you say "we decided," was that you 123

1 12, does your signature appear on that page?

2 A Yes, sir.

3 Q And the third page is entitled "Deposit  
4 slip," and it appears to be dated June 4, 1980?

5 A Right.

6 Q Does this document reflect that you made  
7 a \$400,000 deposit into account number 31332 on June  
8 4, 1980?

9 A Yes.

10 Q And was the \$400,000 deposit in the form  
11 of cash?

12 A Yes.

13 Q Where did the cash come from?

14 A Me.

15 Q Where was it physically located before it  
16 was transported to Israel and deposited into this  
17 account?

18 A In my home.

19 Q How did you transport the \$400,000 from  
20 your home to Israel?

21 A The same way as I did at other times.

22 Q When you travelled to Israel and made  
23 this deposit, did anyone travel with you?

24 A My wife, perhaps.

25 Q Did anyone else travel with you?

1 A I don't remember.

2 Q I think you said that you transported  
3 this cash the same way you did on other occasions.

4 Was that by putting the cash into some  
5 kind of bag or container?

6 A Yes.

7 Q Did you keep that container with you  
8 during the flight?

9 A Yes.

10 Q When you made the deposit, did you make  
11 the deposit at Bank Leumi's Foreign Resident and  
12 Tourist Center?

13 A Yes.

14 Q And is that located at 130 Ben-Yehuda  
15 Street in Tel-Aviv?

16 A Yes, sir.

17 Q Do you recall what floor the Foreign  
18 Resident and Tourist Center is on?

19 A Pardon me?

20 Q Do you recall what floor the Foreign  
21 Resident and Tourist Center is located on at the  
22 address of 130 Ben-Yehuda Street?

23 A No.

24 Q Is it on the ground floor?

25 A No.

1 Q Did you have a conversation with Solomon  
2 after he made a deposit of \$400,000 in cash?

3 A I don't remember.

4 Q Mr. Antar, going down to the notation  
5 dated October 7, 1980, that's farther down?

6 A Way down. October 7, yes.

7 That's this one? No, this is July.

8 MS. KENEALLY: Right here.

9 THE WITNESS: Oh, October, yeah.

10 MR. GERSTEN: That's 255?

11 Q The notation says, "Deposit of cash,  
12 \$255,000"?

13 A Yes.

14 Q Did you make that deposit?

15 A Yes.

16 Q Where did the cash come from?

17 A Me.

18 Q Was that cash that was located in your  
19 home?

20 A Yes.

21 Q Did any portion of the \$255,000 come from  
22 a source or location, other than your home?

23 A From where?

24 Q Let me try to shorten it.

25 Did any part of the \$255,000 come from



1 anywhere else?

2 A No.

3 Q How did you transport the \$255,000 from  
4 your home to Israel?

5 A In the same manner.

6 Q You placed the cash into some kind of  
7 container?

8 A Yes.

9 Q When you made the trip to Israel, did  
10 anyone accompany you?

11 A I believe my wife was with me. I think so.

12 Q Do you recall if anyone else accompanied  
13 you on that trip?

14 A Possibly.

15 Q But you don't recall, as you sit here  
16 today?

17 A No.

18 Q When you made the deposit of cash, did  
19 you make the deposit at the Foreign Resident and  
20 Tourist Center of Bank Leumi?

21 A I believe I did.

22 Q Did you meet with Mr. Nivron on that  
23 occasion?

24 A I don't remember.

25 Q Before you made the trip to Israel, did

1 It says a deposit of cash in the amount  
2 of \$605,010?

3 A Yes.

4 Q Did you make a deposit of approximately  
5 \$600,000 into the account on April 24, 1981?

6 A I believe I did.

7 MR. SIMPSON: Let's have this marked as  
8 the next exhibit.

9 (SEC-14, deposit slip, is marked for  
10 identification.)

11 Q Mr. Antar, let me show you what's been  
12 marked as SEC deposition exhibit number 14.

13 The second page of this exhibit purports  
14 to be a deposit slip.

15 A Right.

16 Q Does your signature appear on the bottom  
17 of the second page?

18 A Yes, sir.

19 Q And the deposit of approximately \$600,000  
20 that you made on April 24, 1981, was that deposit in  
21 the form of cash?

22 A Yes.

23 Q And where did the cash come from?

24 A It could have been from my brother Eddie.

25 MS. KENEALLY: Not could have been, Sam.

1 What do you remember?

2 A Well, because he came with me, and his wife.

3 Q Okay.

4 A But I made the deposit.

5 Q Was your brother Eddie -- that's the  
6 official marked copy, but I can give you an extra copy  
7 that you can write on.

8 A I would appreciate it.

9 MS. KENEALLY: Sam, do you want -- could  
10 we go off the record?

11 May I have a two minute break?

12 MR. SIMPSON: Sure.

13 (Recess.)

14 Q Mr. Antar, if you want to write anything  
15 on any document, I have no objection.

16 A Okay.

17 Q Focusing your attention again on the  
18 deposit of \$600,000 on April 24, 1981, did you make  
19 that deposit at the Foreign Resident and Tourist  
20 Center of Bank Leumi?

21 A Yes.

22 Q Was your brother Eddie present with you  
23 at the time that you made that deposit?

24 A He was present in Israel with me.

25 I don't know whether he came to the bank with

1 A About?

2 Q About his carrying some of the money to  
3 Israel?

4 A There was no conversation.

5 Q Mr. Antar, did the \$605,000 consist of  
6 cash that had been set aside from Crazy Eddie?

7 A Pardon me?

8 Q Did the \$605,000 consist of cash that had  
9 been set aside from Crazy Eddie?

10 A Possibly.

11 Yes.

12 Q Okay.

13 How do you know that the cash -- let me  
14 rephrase that.

15 How do you know that the \$605,000 came  
16 from Crazy Eddie?

17 A I don't think my brother Eddy had that kind of  
18 money.

19 Q Did your brother Eddy tell you that it  
20 came from Crazy Eddie?

21 A Pardon me?

22 Q Did your brother Eddy tell you that it  
23 came from Crazy Eddie?

24 A I didn't ask him.

25 Q To your knowledge, was the \$600,000 set

1 A Yes.

2 Q It says there is a deposit of cash of  
3 \$1,060,000?

4 A Yes.

5 Q Actually I believe the date is April 20,  
6 1982?

7 A What is it?

8 Q April 20?

9 A April 20, okay.

10 MR. GERSTEN: Of '82?

11 MR. SIMPSON: Right.

12 Q Did you make that deposit?

13 A If it says I made it, I made it.

14 MS. KENEALLY: The question is: Do you  
15 know now that you made it or not?

16 THE WITNESS: I don't remember. I don't  
17 remember.

18 MR. SIMPSON: Let's mark this as the next  
19 exhibit.

20 (SEC exhibit number 16, document, is  
21 marked for identification.)

22 Q Showing you what's been marked as SEC  
23 deposition exhibit number 16, and it has some Hebrew  
24 words on it, but it's dated April 20, 1982 and at the  
25 top left-hand corner it says, "Deposit of foreign

1 currency" in English?

2 A Yes.

3 Q Does your signature appear on the bottom  
4 of the first page?

5 A Oh, yes. Yes, sir.

6 Q Does that refresh your recollection that  
7 you were the person who made --

8 A Yes.

9 Q -- the deposit of a million dollars at  
10 the Bank Leumi on April 20, 1982?

11 A Yes.

12 Q Where did the cash come from?

13 A Me.

14 Q Okay.

15 Let me just back up for a foundation  
16 question.

17 Was the form of that deposit in cash?

18 A Pardon me?

19 Q Was the deposit made in the form of cash?

20 A Does it say anything else?

21 Yes.

22 Q When you say the cash came from you, was  
23 that cash that you maintained in your home?

24 A Yes.

25 Q Did any portion of the million dollars in

1 cash come from anywhere else?

2 A Pardon me?

3 Q Did any part of the million dollars come  
4 from anywhere else, other than your home?

5 A My home.

6 Q And no where else?

7 A No where else.

8 Q How did you transport the cash from your  
9 home to Israel?

10 A Same way.

11 Q That was by putting it in a container?

12 A Yes.

13 Q Did you keep the container with you on  
14 the flight to Israel?

15 A Oh, yes.

16 Q Did anyone accompany you on this trip?

17 A I believe so. I don't remember who, though.  
18 At the present moment I don't remember who.

19 Q When you made the deposit of the million  
20 dollars, did you make that deposit in the Foreign  
21 Resident and Tourist Center of Bank Leumi?

22 A Yes, sir.

23 Q Did you meet with Dov Nivron at that  
24 time?

25 A I believe I did.

1 A No.

2 Q At any time subsequent to the time when  
3 you opened up the account, was anyone else added as a  
4 signatory to that account?

5 A No.

6 MR. SIMPSON: Let's mark this as the next  
7 document.

8 (SEC-22, two-page document, is marked for  
9 identification.)

10 Q Mr. Antar, you now have a copy of what's  
11 been marked as SEC deposition exhibit number 22.

12 Turning to the second page of this  
13 exhibit, at the bottom right-hand corner of the  
14 document, is that your signature on the document?

15 A Yes.

16 Q Is this a document that you signed at the  
17 time that you made a deposit of \$600,000?

18 A Yes.

19 Q Into account number 12245?

20 A Yes.

21 Q Where did the cash come from?

22 A Yours truly.

23 MR. SIMPSON: Can you read the response,  
24 please?

25 (The last answer is read back by the



1 court reporter.)

2 A Myself.

3 Q How did you transport the \$600,000 from  
4 the United States to Israel?

5 A Same way.

6 Q And was that in a container in which you  
7 carried the cash?

8 A Yeah, me and my wife.

9 Q Your wife also carried some of the cash?

10 A She might have, she might have. It might have  
11 been one or two, I don't know.

12 Q You don't remember?

13 A No.

14 Q Was this \$600,000 the last remaining cash  
15 that was in the ceiling in your home?

16 A I believe that was.

17 Q And you made this deposit at the same  
18 time that you opened up account number 12245?

19 A Yes.

20 Q Moving down on the first page of what's  
21 been marked as SEC exhibit number 20, at the second to  
22 the last line, there is a notation dated August 21,  
23 1984.

24 It says, "Transferred to A/C 606/13299 in  
25 the amount of \$964,884."

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 95-5283

---

IN RE SAM M. ANTAR,  
Petitioner-Defendant.

---

SECURITIES AND EXCHANGE COMMISSION,  
Plaintiff-Respondent,

v.

SAM M. ANTAR, ALLEN ANTAR, and BENJAMIN KUSZER,  
Defendants,

and

RORI ANTAR, SAM A. ANTAR, MICHELLE ANTAR,  
ADAM KUSZER, SAM KUSZER, SIMON KUSZER,  
ROSE ANTAR, and SAM M. ANTAR,

Relief Defendants.

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HONORABLE NICHOLAS H. POLITAN, UNITED STATES DISTRICT  
JUDGE FOR THE DISTRICT OF NEWARK

Nominal Respondent.

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OPPOSITION OF THE SECURITIES AND EXCHANGE COMMISSION  
TO SAM M. ANTAR'S PETITION FOR WRIT OF MANDAMUS

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UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 95-5283

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IN RE SAM M. ANTAR,

Petitioner-Defendant.

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SECURITIES AND EXCHANGE COMMISSION,

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v.

SAM M. ANTAR, ALLEN ANTAR, and BENJAMIN KUSZER,

Defendants,

and

RORI ANTAR, SAM A. ANTAR, MICHELLE ANTAR,  
ADAM KUSZER, SAM KUSZER, SIMON KUSZER,  
ROSE ANTAR, and SAM M. ANTAR,

Relief Defendants.

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HONORABLE NICHOLAS H. POLITAN, UNITED STATES DISTRICT  
JUDGE FOR THE DISTRICT OF NEWARK

Nominal Respondent.

---

OPPOSITION OF THE SECURITIES AND EXCHANGE COMMISSION  
TO SAM M. ANTAR'S PETITION FOR WRIT OF MANDAMUS

The Securities and Exchange Commission opposes Sam M. Antar's petition for a writ of mandamus seeking recusal of District Court Judge Nicholas H. Politan. Petitioner points to no statement or conduct by the judge in this proceeding that creates an appearance of bias. Instead, he challenges statements

made in a prior related proceeding. Such statements are insufficient to require recusal under the controlling standard set forth in Liteky v. United States, 114 S. Ct. 1147 (1994): They do not stem from an extrajudicial source, nor do they exhibit such a high degree of favoritism or antagonism as to make fair judgment impossible. Thus, the judge did not abuse his discretion in denying the recusal motion, and therefore Antar has not shown that he has a "clear and indisputable" right to the extraordinary relief of a writ of mandamus.

#### BACKGROUND

##### A. The Commission's Complaint Against Antar

In this civil law enforcement action, the Securities and Exchange Commission seeks injunctive relief and disgorgement against petitioner Sam M. Antar ("Antar"), an officer, director and co-founder of Crazy Eddie, Inc., for insider trading in Crazy Eddie common stock in violation of the antifraud provisions of the federal securities laws. <sup>1/</sup> The Commission's complaint,

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<sup>1/</sup> Antar is alleged to have violated Section 17(a) of the Securities Act of 1933, 15 U.S.C. 77q(a), and Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. 240.10b-5 (Exh. B at 25-26).

"Exh. \_\_\_" refers to exhibits to the Transmittal Affirmation of Kathryn Keneally, Esq. in Support of Petition for Writ of Mandamus, dated April 27, 1995. "A \_\_\_" refers to the Appendix to the Declaration of Richard E. Simpson filed in the district court in this action on April 9, 1995, the cited portions of which are attached to this opposition.

At times, Antar is referred to as "Sam" to distinguish him from other members of his family.

filed on September 8, 1993, alleges that over a three-year period from September 1984 through October 1987, Antar sold 1,246,500 shares of Crazy Eddie common stock for proceeds of \$18,661,087 when he knew or was reckless in not knowing that Crazy Eddie's financial statements were materially false and misleading (Exh. B at 24-26).

The complaint seeks a judgment enjoining Antar from committing future violations of the securities laws, ordering him to disgorge his illegal profits, and barring him from serving as an officer or director of any public company (Exh. B at 30-31).

B. Judge Politan's Denial of Antar's Motion for Recusal

On March 24, 1995, Antar filed a motion for recusal of Judge Politan, which Judge Politan denied at a hearing on April 24, 1995 (Exh. D at 25). At the hearing, the judge made clear that he had not formed an opinion about Antar's culpability before hearing the case (id. at 9-11):

I will not in any way, shape, manner or form  
prejudge it nor have I ever prejudged the matter.  
\* \* \* I haven't done any work on the case at all.  
\* \* \* I have not formed any opinion about Sam  
Antar. \* \* \* I've never seen Mr. Antar on the  
stand nor have I ever seen him testify. \* \* \* I  
have no preconceptions as to this man.

STANDARD OF REVIEW

A recusal motion is committed to the sound discretion of the district court judge; his decision to deny the motion should be reversed only for abuse of discretion. Jones v. Pittsburgh National Corp., 899 F.2d 1350, 1356 (3d Cir. 1990); United States



v. Wilensky, 757 F.2d 594, 599-600 (3d Cir. 1985).

A writ of mandamus is a drastic remedy that should be used only in extraordinary circumstances. Kerr v. United States District Court for the Northern District of California, 426 U.S. 394, 402 (1976); Westinghouse v. Republic of the Philippines, 951 F.2d 1414, 1423 (3d Cir. 1991). As the party seeking mandamus, Antar has the burden of showing that his right to issuance of a writ is "clear and indisputable." Allied Chemical Corp. v. Daiflon, Inc., 449 U.S. 33, 35 (1980); Westinghouse v. Republic of the Philippines, 951 F.2d at 1423.

#### ARGUMENT

THE DISTRICT JUDGE DID NOT ABUSE HIS DISCRETION IN DENYING ANTAR'S RECUSAL MOTION BECAUSE ANTAR FAILS TO MEET THE STANDARD FOR RECUSAL SET FORTH IN LITEKY V. UNITED STATES.

Antar argues (Pet. 5-11, 12-13, 19-21) that statements made by Judge Politan in a related case demonstrate that the judge's impartiality might reasonably be questioned. Antar fails, however, to show that these statements meet the governing standard for recusal set out by the Supreme Court in Liteky v. United States, 114 S. Ct. 1147 (1994). Liteky held that the "extrajudicial source doctrine" applies to recusal motions brought under 28 U.S.C. 455(a), which requires a federal judge to "disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Allegations of bias or prejudice based on statements made in judicial proceedings do not require recusal unless they "reveal such a high degree of

favoritism or antagonism as to make fair judgment impossible." Id. at 1157. See, e.g., United States v. Bertoli, 40 F.3d 1384, 1412 (3d Cir. 1994). Because the challenged statements were not extrajudicial, and because they do not make fair judgment impossible, there was no abuse of discretion in denying Antar's recusal motion.

A. Statements Made by Judge Politan in a Prior Criminal Case are not Extrajudicial.

The comments that Antar finds objectionable are not "extrajudicial." They were made during a prior case (United States v. Antar, Exh. A) and were based on testimony Judge Politan heard from presiding over the case. Such knowledge is not "extrajudicial."

Antar nevertheless baldly asserts (Pet. 16-20) that the source of Judge Politan's statements is extrajudicial because Antar was not a party to the prior proceedings. Such a limitation on the extrajudicial source doctrine is contrary to the plain meaning of "judicial." Antar cites no case in support of his proposition, and we are aware of none. Furthermore, several cases have held in analogous situations that recusal is not required. See, e.g., United States v. Schreiber, 599 F.2d 534 (3d Cir.), cert. denied, 444 U.S. 843 (1979) (bench trial of president of corporation where judge previously presided over jury trial of corporation and its general sales manager and stated that there was evidence of president's knowledge of false and fraudulent corporate filings); Ferrari v. United States, 169

F.2d 353, 354-55 (9th Cir. 1948) (bench trial where judge had "heard testimony of a narcotics agent given in another case in which appellant was not a defendant [and] appellant's name was mentioned therein in connection with very damaging evidence.")

In addition, the Supreme Court's reasoning in Liteky refutes Antar's argument. The court stated (114 S. Ct. at 1155):

Also not subject to deprecatory characterization as "bias" or "prejudice" are opinions held by judges as a result of what they learned in earlier proceedings. It has long been regarded as normal and proper for a judge to sit in the same case upon its remand, and to sit in successive trials involving the same defendant.

The fact that Antar is a new defendant in the second trial is a distinction without a difference.

Finally, Antar's argument, if correct, would create difficulties for administration of the judicial system. A party should not be allowed to insist on a trial by a judge who has never come into contact with him or heard anything about him in a related case. "Ours is not a system of disposable judges wherein members of the judiciary may be discarded after a single use."

United States v. Archbold-Newball, 554 F.2d 665, 682 (5th Cir.), cert. denied, 434 U.S. 1000 (1977).

- B. Statements Made by Judge Politan in the Prior Criminal Case Do Not Show Such Deep-Seated Antagonism as to Make Fair Judgment Impossible.

Although Antar does not explicitly argue that Judge Politan has demonstrated such deep-seated antagonism as to make fair judgment of his case impossible, he does argue, after citing

Liteky, that the "record in this action meets all criteria for recusal" (Pet. 13). Assuming that this conclusory statement is an argument that the Liteky standard has been met, the argument fails. The challenged statements -- viewed objectively and in context -- do not demonstrate that it is impossible for this judge to render a fair decision in this case.

1. Statements relating to Antar's attempt to seize bail money paid by Mitchell Antar

On June 11, 1992, Mitchell Antar, Sam's son, was indicted for securities and mail fraud and conspiracy to commit mail fraud (Exh. A at 6). He was convicted on July 20, 1993, sentenced to four years incarceration and ordered to pay \$3 million in restitution (Exh. A at 7). 2/ Subsequently, Sam sought to intervene in the criminal case to oppose a motion by the trustee/receiver to whom restitution was to be paid for turn-over of the \$50,000 that Mitchell had posted for himself as bail (6/30/94 Sam M. Antar Complaint in Intervention (A5)).

Sam made inconsistent assertions about his purported ownership of Mitchell's bail money. In his motion to intervene, Sam claimed that the money was a loan (id. at ¶ 9). But he reversed himself when the trustee/receiver pointed out that a loan indisputably transfers title to the borrower, thereby subjecting the funds to turn-over (7/5/94 Letter-Memorandum of A. Richard Ross at 1 (A28)). Sam then submitted an affidavit

---

2/ Mitchell's conviction was reversed on April 12, 1995. Exh. A at 20.

contradicting his prior claim that the \$50,000 was a loan. He asserted that, in some legally unrecognizable transaction, the money was made available to Mitchell from money due Sam on a loan he had made to his son-in-law's company, but that the money nevertheless remained Antar's (8/31/94 Sam M. Antar Affidavit at ¶¶ 4-5 (A31)).

Judge Politan suspended decision on Sam's motion to intervene until Mitchell provided discovery to the trustee/receiver regarding the extent of his assets (Exh. C at 15-17). When Sam protested that he had not been party to prior proceedings and that he should be allowed separate discovery on the issue of ownership of the bail money (Exh. C. at 18, 21), Judge Politan made a number of statements to explain his ruling. Sam quotes these statements (Pet. 6-7) and asserts that they create the appearance of bias. However, the fact that the challenged statements were well-founded in the record would lead an objective observer to conclude that the judge, rather than exhibiting bias, was exercising appropriate caution in withholding decision on Sam's highly questionable attempt to seize Mitchell's bail money. For example, Judge Politan stated (Exh. C. at 19, 21-23):

the record will show and the record will reflect the interaction and interreaction between these parties and this family and their financial dealings.

\* \* \*

Right now he's [Sam Antar] being charged with

certain activity relative to the Crazy Eddie stock in connection with the SEC proceeding. So he is part of it. Moreover, there was testimony in the record, whether the statute of limitations has run or not, about his carrying millions of dollars across the sea to Israel strapped to his body, and what-have-you. There are all sorts of things.

\* \* \*

Sam does not come in here with a halo on his head based upon the testimony that I heard in this case. I can't close my eyes to it or put blinkers on.

\* \* \*

I'm telling you the Court is aware, having sat through the trial, that his brother got on the stand and testified. His nephew got on the stand and testified.

\* \* \*

What I'm saying to you is this Court cannot put blinkers on and say I never heard that. I heard it. If I heard it, I know there is a lot of interrelationships between these people and a lot of money floating around.

The judge's comments are well-supported by the record in the criminal case. In that case, Sam's brother Eddy ("Uncle Eddy") testified regarding Sam's participation in a cash skimming scheme at Crazy Eddie, Inc. retail stores. Uncle Eddy testified that, beginning in 1973, Sam and Eddie directed him to hold back half of the stores' cash sales proceeds (Trial transcript 4.173-75 (A65)). Uncle Eddy would either drop the cash off himself at Sam's house, or Mitchell or Sam's son-in-law would pick it up (id. at 4.178 (A66)). Uncle Eddy testified that he accompanied Sam on a trip to Israel to deposit skimmed cash in an Israeli

bank account (id. at 4.192 (A68)).

Sam E. Antar, Sam M.'s nephew, corroborated Uncle Eddy's testimony. He confirmed Sam M.'s presence at family discussions about the cash skimming scheme (id. at 8.33 (A62)). He testified that he took cash from Crazy Eddie stores to Sam M.'s house, where they counted it, packaged it for deposit, pulled what they needed for themselves, and allocated the remainder to pay bills (id. at 8.31-32 (A62)). The amount of cash skimmed was approximately \$6 million between 1979 and 1982 (id. at 8.36 (A62)). 3/

Given this record of Sam's conduct, and the judge's understandable skepticism as to Sam's contradictory assertions about his claim to the bail money, the judge's statements do not reveal the high degree of favoritism or antagonism necessary for recusal. 4/ Nor do the other statements with which Antar finds

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3/ Furthermore, the judge's statements concerned actions that Antar admits. In a deposition in this case, Antar conceded that, in conducting the business that came to be known as Crazy Eddie, he and others skimmed cash from the stores (1/11/94 Sam M. Antar Dep. at 57-58 (A101-02)). Antar admitted that he personally took custody of the skimmed cash (id. at 74-75 (A114-15)). He also acknowledged that the cash ended up in Israel and that he personally carried a total of nearly \$3 million in cash to that country (id. at 103, 105-08, 125-26, 134-35, 139-40, 143, 154-56, 230-31 (A118, 120-23, 126-27, 131-32, 136-37, 140, 143-45, 150-51)).

4/ This case presents a very different situation from cases requiring recusal. Compare, e.g., Haines v. Liggett Group Inc., 975 F.2d 81, 88, 97 (3d Cir. 1992) (judge called the tobacco industry, on trial for conspiring to conceal potential health hazards from the public, "the king of

(continued...)

fault. For example, Judge Politan also stated (Exh. C. at 14, 21):

I'm dealing with one large family who have a track record before me.

\* \* \*

Sam is not some innocent bystander. The innocent bystanders laying out there are the public. The public are the innocent bystanders. Not the Antar family. No one in the Antar family was an innocent bystander. That is what I'm saying.

At most, these remarks display impatience, dissatisfaction, annoyance or anger -- within the bounds of what the Supreme Court accepts as immune from a recusal challenge. As the Supreme Court stated in Liteky, 114 S. Ct. at 1155:

The judge who presides at a trial may, upon completion of the evidence, be exceedingly ill disposed towards the defendant, who has been shown to be a thoroughly reprehensible person. But the judge is not thereby recusable for bias or prejudice, since his knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings, and are indeed sometimes (as in a bench trial) necessary to completion of the judge's task.

Consequently, "judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge." Id. at 1157. See also In re Huntington

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4/(...continued)

concealment and disinformation"); Nicodemus v. Chrysler Corp., 596 F.2d 152, 155-56 (6th Cir. 1979) (judge called the defendants "a bunch of villains" during a pre-trial hearing and admitted that it would be difficult for him not to be swayed by episodes then before him if he were to continue sitting).



Commons Associates, 21 F.3d 157, 159 (7th Cir. 1994) (court's impatience with and admonition of defendant in combination with adverse judicial rulings, were not "remotely sufficient evidence of the required 'deep-seated and unequivocal antagonism that would render fair judgment impossible,'" quoting Liteky, 114 S. Ct. at 1157).

Finally, an objective observer may take into account Judge Politan's statements, in denying Sam's recusal motion (Exh. D at 7, 11), that the evidence presented in the criminal case

does not interfere with my judicial judgment as to whether or not Mr. Antar [Sam] is or is not responsible to the SEC in this case. I don't know. I have no prejudgment of that. I have no bias about it one way or the other. I don't even know what the facts are. \* \* \* To suggest to me that I have a mindset or even an appearance of a mindset against Sam Antar is absolutely and unequivocally wrong. 5/

2. Statements relating to the distribution of restitution funds.

In United States v. Antar, a panel of this Court held that Judge Politan committed plain error by not recusing himself sua sponte from presiding over the jury trial of the criminal case against Eddie and Mitchell Antar. The court based its decision

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5/ Antar argues (Pet. 13-16) that Judge Politan erred in asserting that recusal is not required in the absence of actual bias. The above quotation demonstrates that the judge did not rely solely on the absence of actual bias. Furthermore, while it is true that the test is the appearance of partiality rather than actual bias, whether a judge appears to be biased must be judged according to the standard for recusal set out in Liteky. The judge's statements do not warrant recusal under that standard.

on the following statement made by Judge Politan at Eddie's sentencing hearing (after the jury had returned a unanimous verdict for conviction), in response to a question concerning the potential claimants to restitution (Exh. A at 10):

My object in this case from day one has always been to get back to the public that which was taken from it as a result of the fraudulent activities of this defendant and others.

The Court held that "a reasonable person could think that the judge's goal during the criminal proceeding -- and the reason behind some of the rulings -- was to enforce orders he issued in a parallel civil case," and that such a goal was improper in a criminal case (*id.* at 20).

Sam argues (Pet. 10) that the judge's reference to "and others" includes him. The reference to "others," however, is ambiguous. The most reasonable interpretation is that "others" refers to persons found to have committed fraud or those who admitted their role in the fraud in testimony at trial. This Court included Mitchell in "others" because he was a co-defendant (Exh. A at 20). Since Sam was neither named as a defendant nor testified as a witness in the criminal case against Eddie and Mitchell, it is pure speculation for Sam to stretch "others" to cover himself. 6/

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6/ Antar's assertion (Pet. 2, 4) that the allegations against Eddie and Mitchell are "indistinguishable" from the allegations against him is inadequate to support the conclusion that "others" must also include Antar.

Finally, Sam argues (Pet. 8-11) that the "reasoning" in United States v. Antar applies equally to him. Assuming for purposes of this petition that the decision in United States v. Antar is correct, 7/ its reasoning has no relevance here because there is no pending parallel case against Sam. No criminal charges have been filed. Judge Politan is presiding over only one action against Sam, this civil enforcement action brought by the Commission. Thus, there is no possibility of the judge having the "improper goal" of using a pending case as a means to enforce orders that were entered in a prior case.

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7/ The U.S. Attorney has been granted an extension of time until May 26, 1995 to seek rehearing or to suggest rehearing en banc.

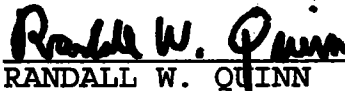
CONCLUSION

Antar has failed to show that the judge abused his discretion in denying the recusal motion, and therefore Antar has not shown a clear and indisputable right to the extraordinary relief of a writ of mandamus. For these reasons, the petition for a writ of mandamus should be denied.

Respectfully submitted,



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**A T T A C H M E N T**