

1 JUDICIAL ARBITRATION AND MEDIATION SERVICES

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3
4 TriPacific Capital Advisors,)
LLC, a Delaware limited)JAMS Reference No.
5 liability company,)1200057704
)
6 Claimant,)
 v.)
7)
TFM Advisors, Inc., a) Volume III
8 California corporation;)
Tom F. Mahathirath, an)
9 individual,)
)
10 Respondents.)
-----)

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14 TRANSCRIPT OF ARBITRATION PROCEEDINGS
15 BEFORE THE HONORABLE
16 ROSALYN M. CHAPMAN (Ret.)
17 WEDNESDAY, JUNE 29, 2022
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22

23 REPORTED BY NANCY J. MARTIN
24 CSR. NO. 9504, RMR, RPR
25 PAGES 493 - 723

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17 Transcript of Proceedings before
18 Hon. Rosalyn M. Chapman (Ret.) and
19 Nancy J. Martin, a Registered Merit Reporter,
20 Certified Shorthand Reporter. Beginning at 9:06 a.m.
21 and adjourning at 4:29 p.m.
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24
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5 REDIRECT EXAMINATION BY MR. ENGLAND 710

6 RECROSS-EXAMINATION BY MR. LIVINGSTON 721

7

EXHIBITS

8

ADMITTED INTO EVIDENCE

9

| NUMBER | MARKED |
|----------------|--------|
| 10 Exhibit 122 | 702 |
| 11 Exhibit 124 | 704 |
| 12 Exhibit 402 | 581 |

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1 LOS ANGELES, CALIFORNIA, WEDNESDAY, JULY 29, 2022;
2 9:01 A.M.
3 -oOo-
4 HON. CHAPMAN: All right. Let's go on the
5 record in the matter of TriPacific Capital Advisors,
6 LLC vs. TFM Advisors, Inc. and Tom F. Mahathirath and
7 cross-action JAMS Case No. 1200057704.
8 Let the record reflect that counsel for
9 TriPacific are present, Messieurs Livingston and
10 Brown. Mr. Fearn is also present, and counsel for
11 the respondents and cross-complainants are present,
12 Mr. England, Mr. Affeld.
13 You're still under oath, Mr. Mahathirath.
14 Do you remember where you were in your
15 examination, Mr. England?
16 MR. ENGLAND: Yes, We do.
17 HON. CHAPMAN: All right. Please pick up.
18 Thank you.
19 MR. ENGLAND: Thank you, Your Honor.
20
21 DIRECT EXAMINATION (RESUMED)
22 BY MR. ENGLAND:
23 Q. I have one quick follow-up question from
24 yesterday.
25 Mr. Mahathirath, when you were contacted by

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1 Q. Exhibit 92 is exactly what it was. Can you
 2 show me where there's deferred fees of greater than
 3 that number?
 4 A. Exhibit 92?
 5 MR. ENGLAND: Objection. That's the printed
 6 out spreadsheet.
 7 HON. CHAPMAN: Listen, your attorney is quite
 8 capable of making objections. You're supposed to
 9 answer questions if you could. If you don't
 10 understand the question, just say you don't understand
 11 the question. Don't ask another question in response.
 12 Go ahead, Mr. Livingston. Reask your
 13 question.
 14 MR. LIVINGSTON: I'll move on, Your Honor. I
 15 think we've covered the subject.
 16 Q. Let me turn to something you haven't been
 17 asked much about, and that's TFM Advisors, Inc., a
 18 company you have joined in this lawsuit.
 19 TFM Advisors, Inc. is nothing more than an
 20 estate plan for your estate; correct?
 21 A. Correct.
 22 Q. And the concept was to create a separate
 23 company so that you could convert some of your income
 24 into a defined benefit plan; correct?
 25 A. Yes.

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1 Q. And that's why you wanted to assign some of
 2 your bonus income from TriPacific to TFM; correct?
 3 A. Yes.
 4 Q. And you and your wife are the only two
 5 employees of TFM; correct?
 6 A. Yes.
 7 Q. At least while you were employed by
 8 TriPacific, TFM incurred no business; correct?
 9 A. No. No. That's right. Correct.
 10 Q. It was set up simply, as you said, to receive
 11 bonus payments from TriPacific; correct?
 12 A. Correct.
 13 Q. It had no clients, no other contracts; right?
 14 A. Correct.
 15 Q. And you listed the address of TRM as being
 16 located at your home address; is that right?
 17 A. I'm sorry. You said, "TRM."
 18 Q. I'm sorry. TFM. My apologies.
 19 A. As my home address, correct.
 20 Q. So it didn't have any additional expenses
 21 like rent or utilities or mortgage interest beyond
 22 what you're already paying for your own home; correct?
 23 A. It did not have a building, correct.
 24 Q. And the filing you made with the secretary of
 25 state lists the purpose of TFM as a real estate

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1 advisory company; is that correct?
 2 MR. ENGLAND: Objection. Relevance to all of
 3 this, Your Honor.
 4 HON. CHAPMAN: Wait a minute. I'll give some
 5 leeway. If it turns out not to be relevant, we can
 6 strike it.
 7 I'll give you some leeway Mr. Livingston. Go
 8 ahead.
 9 THE WITNESS: My accountant filed my
 10 corporation papers. So if he put that in there,
 11 then -- but it was really nothing more than a
 12 pass-through. There's nothing about, you know,
 13 starting my own company to compete with TriPacific or
 14 anything like that.
 15 BY MR. LIVINGSTON:
 16 Q. Now, according to public records, you had an
 17 \$83,705 PPP loan approved on May 1, 2020 for payroll
 18 for TFM Advisors, Inc.; is that correct?
 19 A. I believe so.
 20 Q. And that loan had to be used for payroll
 21 expenses and operating expenses; correct?
 22 A. My accountant filed that PPP loan. So
 23 whatever he did, I just went with it. I'm not
 24 familiar with the specifics of the PPP components.
 25 Q. This payroll request you made in May of 2020

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1 was made when you were a full time employee of
 2 TriPacific; correct?
 3 MR. ENGLAND: Same objection, Your Honor.
 4 HON. CHAPMAN: No. Overruled. It clearly
 5 goes to credibility and honesty. Overruled.
 6 Go ahead.
 7 THE WITNESS: What's the time frame again?
 8 I'm sorry.
 9 BY MR. LIVINGSTON:
 10 Q. The approval was May 1, 2020.
 11 A. I guess. Again, my CPA did it. I didn't --
 12 I didn't do it.
 13 Q. Well, you signed the application for the
 14 loan; correct?
 15 A. I did.
 16 Q. Okay. And, again, this payroll request that
 17 you made in May of 2020 was made when you were a full
 18 time employee of TriPacific making almost \$1 million a
 19 year; correct?
 20 A. Correct.
 21 Q. That loan was approved four months before you
 22 left TriPacific; correct?
 23 A. I don't -- yeah.
 24 Q. And you are aware, I assume, that PPP
 25 provisions require that the minimum number of

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1 employees that a company must have to receive a PPP
2 loan was at least four; correct?
3 MR. ENGLAND: Objection. Assumes facts.
4 Argumentative.
5 HON. CHAPMAN: No, he can ask.
6 If you can answer, answer. If you can't, you
7 can't.
8 THE WITNESS: I was unaware.
9 BY MR. LIVINGSTON:
10 Q. Now, you later applied for a second PPP loan,
11 this one larger, for \$108,275 while you were living in
12 your new home in Shady Canyon; correct?
13 A. Correct.
14 Q. And that home recently sold for
15 \$11-1/2 million; correct?
16 A. Correct.
17 Q. And that second loan was also for payroll for
18 TFM; correct?
19 A. That was payroll, and when my accountant
20 filed, he took into consideration something about my
21 defined benefits. So again, it's whatever my
22 accountant did. I just did whatever he said.
23 Q. And again, you signed the loan application
24 for that second \$108,000 loan; correct?
25 A. I did.

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1 Q. In fact, you later applied for and received
2 forgiveness for both of those loans; correct?
3 A. Yes.
4 Q. So you collected a total of about \$193,000 in
5 PPP loans for TFM; Correct?
6 A. I guess, yes.
7 Q. A company that had no business, no contracts,
8 and only you and your wife as employees; correct?
9 A. Again, my accountant prepared it. I don't
10 know what variables he put in there, but I'm
11 testifying that it was my wife and I, and we had the
12 defined benefits. We had the costs associated. But
13 again, this is my accountant that did it.
14 Q. You're not willing to admit that this was
15 really just loan fraud?
16 MR. ENGLAND: Of course not. Objection.
17 Argumentative.
18 HON. CHAPMAN: No, the objection is
19 overruled.
20 THE WITNESS: No, I'm not aware. The answer
21 is no.
22 BY MR. LIVINGSTON:
23 Q. Let's turn to a different subject. In
24 November of last year you produced about 22,600 pages
25 of documents in this case; correct?

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1 A. I don't even know -- whatever was in the -- I
2 can't say it was 22,000 or 20,000. Whatever we had,
3 we sent it over.
4 Q. All right. So these were documents that were
5 on the Surface Pro device that you retained when you
6 were terminated from TriPacific; correct?
7 A. Correct.
8 Q. And these were documents that you had copied
9 onto the Surface Pro after you purchased it; correct?
10 A. Yes.
11 Q. They were documents that you took off of the
12 TriPacific network drive; correct?
13 A. Yes.
14 Q. You did not tell Mr. Fearn that you were
15 copying all those documents from the TriPacific
16 network drive; correct?
17 A. I did not. I didn't think I needed to.
18 Q. You copied documents that were -- that
19 predated your employment with TriPacific; correct?
20 A. I copied a root folder. If it had predated
21 information, then it was in there, I guess. I didn't
22 go through and search individual folders or anything
23 like that.
24 Q. You had the TriPacific Capital Advisors
25 formation agreement and operating agreement from the

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1 early 2000s that you copied; correct?
2 A. Again, if it's in there, if we produced it,
3 then it was part of the copy.
4 Q. You had a copy of TriPacific's revolving line
5 of credit agreement with US Bank; correct?
6 A. Mr. Livingston, we can do this all day, and I
7 don't see -- I'm not denying that I had that stuff. I
8 don't know what is in there. It was part of 22,000
9 documents. I don't know what specifically is in
10 there.
11 Q. You had copies of memos and letters that were
12 neither sent to or from you in those files; correct?
13 MR. ENGLAND: Objection, Your Honor.
14 Relevance.
15 HON. CHAPMAN: At some point we're going to
16 cut this off, Mr. Livingston. So figure out when.
17 BY MR. LIVINGSTON:
18 Q. Is that correct, sir?
19 A. It was whatever -- if the E-mails or
20 whatever -- or correspondences were in the folder,
21 then yes, it was apparently copied as well.
22 Q. You copied and kept pass codes to
23 TriPacific's storage unit; correct?
24 MR. ENGLAND: Same objection, Your Honor.
25 THE WITNESS: Again, I don't know. Pass

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