

<p style="text-align: right;">25</p> <p>1 A I'm sure we could research it and find it out. 2 Probably our bookkeeper. 3 Q What's the bookkeeper's name? 4 A Diane Morgan. 5 Q Diane Morgan? 6 A Uh-huh. 7 Q Is her title with the bank, Bookkeeper? 8 A Yes, or Deposit Operations Supervisor. 9 Q Deposit Operations Supervisor. How long has 10 Diane worked at the bank? 11 A Since we opened it in 2002. 12 Q So you called Darin on the telephone and he 13 picked up the telephone? 14 A Yes. I remember that specifically because when 15 I told Bob that I needed to speak with Darin, he said 16 you can call him in his office. He's there. I've seen 17 him. So when I called him, he picked up the phone. 18 Q So you called him in the office or you called 19 him at the telephone number that was at the bank? 20 A I believe the number that was on the system was 21 his office phone number. 22 Q Can you take a look at the documents there, the 23 signature card, and tell me what number you see there? 24 A For which account? 25 Q For any of them, Voice Over IP, LLC.</p>	<p style="text-align: right;">27</p> <p>1 A We didn't speak of particular transfers. 2 Q You just said you spoke to him about 3 transfers. What transfers were you referring to? 4 A Well, Bob had said if I ever needed to take 5 money from his account, that he had spoken with Darin 6 about it and that I can take it. If I have exhausted 7 every other method that I normally transfer for him, I 8 could take from Darin's accounts, to which I said that's 9 cool, but I have to call and speak to Darin because you 10 don't sign on those accounts and then I called him. 11 Q What specifically did you tell Darin? 12 A I said hello, how are you. Did you speak with 13 Bob about the transfers? Yes. So it's cool? Yes. 14 Q You didn't say is it okay if I always use your 15 account to cover any overdrafts? 16 A No. 17 Q Why not? 18 A I didn't think it was unusual. 19 Q You didn't think it was unusual to have 20 somebody else just cover overdrafts for somebody else 21 and not ask them about it? 22 A Well, it wasn't somebody else. These guys were 23 partners as long as I've known them. They signed on 24 accounts together, so it didn't seem unusual to me. 25 Q But these accounts, Bob Smoley wasn't a</p>
<p style="text-align: right;">26</p> <p>1 A 528-6200. 2 Q Do you know whose telephone number that is? 3 A No. 4 Q Do you know what Robert Smoley's cell phone 5 number is? 6 A I don't. 7 Q How often were you talking to Bob Smoley about 8 this time? 9 A I would say he called me just about every day. 10 Q Okay, did you ever call him? 11 A I've called him, yes. 12 Q You don't know what his telephone number is? 13 A His account's been closed for a year now. I 14 don't remember what it is. 15 Q That 528-6200 doesn't ring a bell to you? 16 A Uh-uh. 17 Q And you don't know whether that's Darin's 18 number or not; do you? 19 A I don't know. 20 Q So you called Darin and what specifically did 21 you say to Darin? 22 A I think we had a brief friendly conversation. 23 I asked him if he spoke to Bob about the transfers. He 24 said he did and I said, so is it okay? And he said yes. 25 Q What transfers did you tell him about?</p>	<p style="text-align: right;">28</p> <p>1 signatory, and when I say these accounts, I mean the 2 accounts of the plaintiffs in the lawsuit. 3 A Yes. 4 Q Agreed? 5 A Yes, Bob didn't sign on it. That's why I 6 called Darin. 7 Q And you called Darin and you didn't ask him 8 whether you had the authority to transfer any money you 9 ever wanted out of those accounts to cover overdrafts in 10 Bob Smoley's accounts? 11 A If you're asking me if I specifically said 12 those words? 13 Q That's what I'm asking you. 14 A No, I did not. 15 Q What did you specifically say? 16 A I specifically asked him if he spoke to Bob 17 about the transfers. He said I just spoke with Bob. 18 It's cool. So is it okay to do the transfers? Yes. 19 Q And that was it? Good-bye, have a nice day? 20 A That was it. I think we talked, we might have 21 talked about the helicopter for a second. 22 Q Do you recall then making, on February 15, 23 2005, a transfer from the Voice Over IP checking account 24 at Community Bank of Broward without Mr. Grey's written 25 authorization or consent to another account?</p>

1 A If you're saying written, I did make that
2 transfer without written approval. He gave me his consent
3 though.
4 Q And again, on February 15, 2005, you processed
5 another transfer, \$5,000 from the plaintiff, DBS
6 Supplements LLC's account without the written
7 authorization of Darin Grey?
8 A Yes.
9 Q And again, you didn't call Darin specifically on
10 each one of those days prior to making each one of those
11 transactions?
12 A No, I didn't.
13 Q You simply just called him, according to your
14 testimony, a few days prior to January 14, 2005 and had
15 the conversation you just testified to?
16 A Absolutely.
17 Q And that was the extent of any of your
18 conversations with respect to those transfers?
19 A At that moment, yes.
20 Q When you say at that moment, you mean up until
21 the last transfer was made?
22 A That's right.
23 MR. EGOZI: Mark that as Exhibit 3.
24 (Thereupon, Plaintiff's Exhibit 3 was marked
25 for identification.)

1 BY MR. EGOZI:
2 Q Mr. Korshoff, the court reporter has placed
3 before you a document marked as Exhibit 3 to your
4 deposition. Do you recognize this document?
5 A Yes.
6 Q Do you recall sending an e-mail on February 15,
7 2005 at 8:22 a.m. to Bob Smoley?
8 A Yes.
9 Q Do you recall telling him that his escrow
10 account was short \$20,000 and that his operating account
11 was short \$604?
12 A Yes.
13 Q When you say escrow account, what account are
14 you referring to?
15 A It's his attorney's escrow account.
16 Q Are you aware that there are requirements of
17 the bank to report when an escrow account of an attorney
18 is overdrawn?
19 A No.
20 Q How long have you worked in the banking
21 industry?
22 A 18 years.
23 Q How long have you been opening accounts for
24 lawyers?
25 A I don't open too many accounts for lawyers.

1 Q Are you aware that there is an obligation upon
2 banks to contact the Florida Bar if a trust account goes
3 overdrawn?
4 A No.
5 Q Does the bank have any policies and procedures
6 in place with respect to a trust account going
7 overdrawn?
8 A I don't know.
9 Q In that e-mail, you also indicate that Darin's
10 1800 Ink account is now empty and he has \$26,000 in
11 Voice Over IP. Please have him give me a ring if you'd
12 like me to transfer that.
13 Do you recall making that statement to him?
14 A No, but I typed it.
15 Q And you definitely typed it and sent this
16 e-mail?
17 A Yes.
18 Q Can you tell me why you would need Darin to
19 give you a ring if you already, as you previously
20 testified to, said you had his authorization from a few
21 weeks ago to make any transfers you wanted?
22 A I don't know.
23 Q You agree that it's inconsistent; don't you?
24 MR. BLACK: Object to form.
25 BY MR. EGOZI:

1 Q You can answer.
2 MR. BLACK: Yes, you can answer.
3 THE WITNESS: It's inconsistent with what?
4 BY MR. EGOZI:
5 Q With your prior testimony.
6 A Okay, yes.
7 MR. EGOZI: Mark that as Plaintiff's
8 Exhibit 4.
9 (Thereupon, Plaintiff's Exhibit 4 was marked
10 for identification.)
11 BY MR. EGOZI:
12 Q The court reporter has placed before you a
13 document marked for identification purposes as Exhibit 4
14 to your deposition. Do you recognize this document,
15 Mr. Korshoff?
16 A Yes.
17 Q Do you see the e-mail at the top sent by you to
18 Robert Smoley at 2:54 p.m. that same day, February 15,
19 2005?
20 A Yes.
21 Q Okay, and did you in fact send this e-mail?
22 A Yes.
23 Q Again, do you see at the bottom where it says
24 P.S., to keep me out of hot water, I had to transfer all
25 that I could out of Darin's accounts, \$26,000 from Voice

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1 Over IP and \$5,000 from DBS Supplements.
 2 Do you see that?
 3 A Yes.
 4 Q And you typed that and sent that?
 5 A Yes.
 6 Q And it indicates after the \$117,000 we took
 7 from 1800 Ink and today's transfers, there is now
 8 nothing left to transfer from Darin's accounts. Icom is
 9 still overdrawn by about \$7,000.
 10 A Yes.
 11 Q And you typed this and you sent this e-mail?
 12 A Yes.
 13 Q Did you contact any of your supervisors at this
 14 time at the bank or were you the only supervisor?
 15 A I was the only supervisor.
 16 Q Who did you report to at that time when you
 17 were working at the bank?
 18 A My boss, Joe Dorsey.
 19 Q Can you spell his last name?
 20 A D-O-R-S-E-Y.
 21 Q What was his position with the bank?
 22 A He's the Executive Vice President.
 23 Q And was that his position in February of 2005?
 24 A Yes.
 25 Q Is that still his position with the bank?

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1 A Yes.
 2 Q What branch of Community Bank of Broward does
 3 he work in?
 4 A He doesn't work in a branch.
 5 Q Where does he work?
 6 A He works at our Weston executive offices.
 7 Q Did you ever talk to Mr. Dorsey regarding any
 8 one of those accounts?
 9 A No.
 10 Q Did you ever talk to Mr. Dorsey regarding the
 11 fact that Mr. Smoley was overdrafting his accounts?
 12 A I mean, I had a certain approval authority, so
 13 everything above that he had to sign. So he was aware
 14 of it. Again, these were customers I had managed for 15
 15 years.
 16 Q What was your approval authority at this time
 17 that you didn't have to go above your head for?
 18 A I think it's \$50,000.
 19 Q So at that time when you transferred \$117,000
 20 out of Darin's accounts, weren't you supposed to go to
 21 Mr. Dorsey for approval?
 22 A No.
 23 Q You had the authority to transfer \$117,000
 24 without his approval?
 25 A Yes.

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1 Q And even though accounts were being overdrawn
 2 by over \$100,000, you didn't have to talk to him about
 3 it?
 4 A If it wasn't covered or if it wasn't covered
 5 over my approval amount, then I had to have his
 6 approval.
 7 Q As the branch manager, do you get an overdraft
 8 sheet every morning?
 9 A Yes.
 10 Q What do you do with that overdraft sheet?
 11 A I read it.
 12 Q And do you call all of the people listed on the
 13 sheet and ask them what's going on with their account
 14 and ask them to bring it current?
 15 A No.
 16 Q What do you typically do?
 17 A I manage the relationships on the account based
 18 on my experience with each individual customer.
 19 Q Okay, so one customer who may be overdrawn a
 20 few thousand dollars every time, you know he's good for
 21 it, you won't contact him while someone else you may
 22 contact because they've never been overdrawn. Is that
 23 what you mean?
 24 A Yes.
 25 Q And is Robert Smoley one of those customers who

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1 was consistently overdrawn on his accounts?
 2 A Robert Smoley was consistently overdrawn on
 3 some of his accounts.
 4 Q When you would see these overdrafts, would you
 5 call him? Was he a customer that you would call?
 6 A Not every day.
 7 Q But he would call you every day?
 8 A He would call me every day; most days.
 9 Q What would he call you about?
 10 A Status of his accounts, transfers, wire
 11 transfers out. They had 80 accounts with us, so there
 12 was always something to talk about.
 13 Q You have Exhibit I there before you; don't you?
 14 You see the exhibits to the lawsuit that was filed here,
 15 there are documents that the bank has agreed to, as you
 16 testified earlier, that have confidential disclosure
 17 requirements of the bank. You're familiar with those?
 18 A Uh-huh.
 19 Q That's a yes?
 20 A Yes.
 21 Q Okay, and you're aware that the bank is not to
 22 disclose the information of one account holder to
 23 another account holder?
 24 A Yes.
 25 Q Can you tell me why you're e-mailing Robert

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1 Smoley about the accounts of Darin Grey and what the
 2 balances are and how much has been taken out of them
 3 without Darin Grey's written or verbal authority at this
 4 point?
 5 MR. BLACK: Object to form; lack of
 6 predicate.
 7 BY MR. EGOZI:
 8 Q You can answer.
 9 A They had been partners for as long as I've
 10 known them. Bob always handled the business end of
 11 these things, so any communications, he was doing for
 12 Darin as a favor. When Darin wanted a loan, he gathered
 13 the paperwork for me. He was Darin's representative,
 14 his attorney, all of his legal transactions that he had,
 15 I communicated through Bob for Darin.
 16 Q Okay, so on the February 15, 2005 e-mail that's
 17 marked as Exhibit 4, you were contacting Robert Smoley
 18 as the attorney for Darin Grey and these companies?
 19 A No.
 20 Q So I'll ask again, why is it that you disclosed
 21 private, confidential information regarding these
 22 accounts to Robert Smoley when your contract provides
 23 otherwise?
 24 A Because it's always been that way.
 25 Q Is it always the bank's practice to violate

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1 these confidentiality agreements?
 2 MR. BLACK: Object to form. Are you really
 3 asking him to answer that question?
 4 MR. EGOZI: Yes.
 5 THE WITNESS: Is the question, is it the
 6 bank's policy to always violate the privacy
 7 policy?
 8 BY MR. EGOZI:
 9 Q Yes.
 10 A The answer is no, but when I have a
 11 relationship, this is his brother-in-law. He handled
 12 the business end of it for Darin, so it wasn't unusual
 13 for me to discuss that with him.
 14 Q And his brother-in-law was not a signatory on
 15 any of these accounts; is that correct?
 16 A These three accounts, he was not a signatory.
 17 Q And he was not entitled to any of the
 18 information regarding those accounts; is that correct?
 19 A According to our agreement by the letter,
 20 you're right.
 21 Q Yet you still gave him that information?
 22 A Yes.
 23 MR. EGOZI: Mark this as Plaintiff's
 24 Exhibit 5.
 25 (Thereupon, Plaintiff's Exhibit 5 was

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1 marked for identification.)
 2 BY MR. EGOZI:
 3 Q The court reporter has placed before you,
 4 Mr. Korshoff, a document marked as Exhibit 5 to your
 5 deposition. Do you see that document?
 6 A Yes.
 7 Q You recognize the document?
 8 A Yes.
 9 Q Who is Louis Cohen?
 10 A He is a guy that worked with Bob.
 11 Q Did he have any accounts for which you could take
 12 money to cover overdrafts?
 13 A No.
 14 Q Do you remember talking to Bob on or about April
 15 13, 2005 about the fact that he was overdrawn \$100,000?
 16 A I don't recall in particular, but I did write the
 17 e-mail.
 18 Q Okay, you wrote this e-mail labeled Exhibit 5 to
 19 your deposition?
 20 A Yes.
 21 Q And you indicated in the e-mail that the Board of
 22 Directors has to approve this \$100,000 overdraft?
 23 A Uh-huh.
 24 Q That's a yes?
 25 A Yes.

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1 Q Okay, and was it your understanding back in
 2 April of 2005 that if an account went overdrawn by
 3 \$100,000, you would have to get approval of the Board of
 4 Directors to carry that overdraft?
 5 A Yes.
 6 Q Why is it that when Mr. Smoley's other accounts
 7 went overdrawn by \$117,000, you didn't contact the Board
 8 of Directors or any of your supervisors?
 9 A You're confusing two issues. If I carry an
 10 overdraft, if there's a negative balance in an account
 11 and it's not covered and I carry it, that's what needs
 12 to be approved, but if somebody covers their overdraft
 13 that morning that I call them or that we speak, then
 14 they're not overdrawn. It wouldn't trigger that call to
 15 the Board of Directors.
 16 Q Back in April of 2005, how long did an account
 17 have to be overdrawn in your eyes in order for you to go
 18 contact the superior?
 19 A I don't have to contact my superior for
 20 overdrawn accounts.
 21 Q Okay, so then why did you indicate in an e-mail
 22 that the Board of Directors have to approve this because
 23 his accounts were overdrawn by \$100,000?
 24 A It was the amount. It wasn't the length.
 25 Q You testified earlier that the \$117,000