

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
-vs-) CIVIL NO.
) 2:15-cv-00828 DN
RAPOWER-3, LLC, INTERNATIONAL)
AUTOMATED SYSTEMS, INC., LTB1,)
LLC, R. GREGORY SHEPARD, NELDON)
JOHNSON and ROGER FREEBORN,)
Defendants.

Deposition of BRIAN ZELEZNIK, taken at the
instance of the Plaintiff, before Laurel A. Patkes,
CSR #084-001340, on Tuesday, August 2, 2016 at the
hour of 9:00 a.m., at 318 S. Sixth Street,
Springfield, Illinois, pursuant to notice.

**Plaintiff
Exhibit**

B

Zelevnik, Brian

A P P E A R A N C E S

U. S. DEPARTMENT OF JUSTICE, by
ERIN HEALY GALLAGHER
CHRISTOPHER R. MORAN
ERIN R. HINES (present by phone)
P.O. Box 7238
Ben Franklin Station
Washington, D.C. 20044
erin.healygallagher@usdoj.gov
(202)353-2452

appearing on behalf of the
Plaintiff;

HEIDEMENT & ASSOCIATES, by
JUSTIN D. HEIDEMAN
2696 N. University Avenue
Suite 180
Provo, Utah 84604
jheideman@heidlaw.com
(801)472-7742

appearing on behalf of Defendants
Rapower-3, LLC, International
Automated Systems, Inc., LTB1,
LLC and Neldon Johnson;

STOEL RIVES, LLP, by
PAUL JONES
4766 S. Holladay Boulevard
Salt Lake City, Utah 84117
(801)930-5101
paul@pauljonesattorney.com

appearing on behalf of the
Deponent.

1 phone is our colleague Erin Hines.

2 For the record, this deposition will
3 be taken in accordance with the Federal Rules of
4 Civil Procedure.

5 We're in the second day of
6 depositions here in Springfield. Several exhibits
7 were marked yesterday. Counsel for the United
8 States has had custody of those exhibits overnight.
9 We'll be leaving those exhibits as well as any other
10 exhibits that we mark today with the court reporter
11 when we conclude with the deposition transcript.

12
13 BRIAN ZELEZNIK
14 called as a witness herein, having been first duly
15 sworn on his oath, was examined and testified as
16 follows:

17
18 DIRECT EXAMINATION

19 BY MR. MORAN:

20 Q. Mr. Zeleznik, have you ever had your
21 deposition taken before?

22 A. No. First time.

23 Q. First time. All right.

24 Then I'm going to go over some of the
25 ground rules. Your attorney may have already gone

1 A. I purchased those lenses from
2 RaPower.

3 Q. Mr. Zeleznik, do you recall getting a
4 subpoena from the government for documents?

5 A. I do.

6 Q. How did you get that?

7 A. A gentleman walked up to our door and
8 said, I have a subpoena, and that was it is. I
9 signed it.

10 Q. What did you do in response to that
11 subpoena?

12 A. Compiled documents and sent what was
13 asked.

14 Q. Did you talk to anyone about
15 preparing your response?

16 A. I sent an inquiry to Dr. Shepard and
17 said I've received the subpoena.

18 His instructions to me were to just
19 do what it asked. He had mentioned Mr. Jones as
20 well, but other than that, that was it.

21 So I just followed the instructions
22 on the subpoena and sent the information.

23 Q. How did you communicate with
24 Mr. Shepard about that?

25 A. I believe I placed a phone call.

1 Q. You didn't communicate via e-mail?

2 A. About the subpoena?

3 Q. Yes.

4 A. I don't think I did.

5 Q. Can you tell me where you looked for
6 the documents?

7 A. In my files and on the RaPower-3 site
8 in my log-in member area.

9 Q. So you have a log-in to RaPower?

10 A. Uh-huh. Yes, yes. Sorry.

11 Q. Can you tell me what information you
12 access there?

13 A. When I access my log-in member area
14 at RaPower, I can see the invoices for the
15 purchasing of the lenses that I bought.
16 I can also see payments made on there
17 as well, so payments I made towards the principal
18 that I owed on the lenses. They keep track of that
19 for me.

20 Q. Anything else?

21 A. I can also see the two individuals
22 that I sponsored on there as well and their
23 activity.

24 Q. What type of activity?

25 A. Lenses purchased.

1 Q. How about payments made?

2 A. By them, no, no, I can't access their
3 payment information.

4 Q. And you printed out information from
5 the RaPower-3 website and produced it to the
6 government?

7 A. I did, yes, I did.

8 Q. And you mentioned other documents you
9 had in your files?

10 A. Tax, you know, 1040s. I've got, oh,
11 what would you call them, stubs or receipts for
12 money I've received through my business so records
13 of that, of deposits, records of deposits into my
14 business savings account that I have for this.

15 There were a number of, you know,
16 operation and maintenance agreement forms for the
17 leasing of my lenses.

18 Q. Okay. And after you gathered those
19 documents, what did you do with them?

20 A. Gathered them, copied them. So I've
21 got them all on file, and then I send them off.

22 Q. Who did you send them to?

23 A. Peoria. That's where they went.

24 Q. Via...

25 A. Via -- I don't know where they were

1 out, the trust was to receive this amount of money
2 and the bonuses.

3 Q. So whatever the bonus is paid out,
4 that would go to the trust?

5 A. If it's specifically stated.

6 I own the lenses, not the trust.

7 Q. Does your wife own any lenses?

8 A. No, she does not.

9 Q. So you own them all in your name?

10 A. Yes.

11 (Plaintiff's Exhibit 59 was
12 marked for identification.)

13 Q. Mr. Zeleznik, you've been handed a
14 copy of what's been marked for identification as
15 Plaintiff's Exhibit 59.

16 A. Correct.

17 Q. Do you recognize Exhibit 59?

18 A. I do.

19 Q. What is that?

20 A. It's Abraham's trust fund register.

21 Q. Okay. Is this a document that you
22 produced to the United States?

23 A. It is.

24 Q. Okay. I see several deposits on
25 this.

1 A. Correct.

2 Q. What's the source of those deposits?

3 A. That's commission income from owning
4 the lenses.

5 Q. Okay. And how do you receive
6 commission income?

7 A. Through advertising and basically
8 sponsoring people to start their own business.

9 Q. Okay.

10 A. And so I receive a fee for that.

11 Q. You mentioned sponsoring people?

12 A. Yes.

13 Q. What does that mean?

14 A. That I talked to them about it so my
15 father and Frank Lunn talked to them about it. If
16 they decide to sign up, then they sign up and then
17 you get commissions on their purchases.

18 Q. Okay.

19 A. So, yeah, it's like buying and
20 selling a car.

21 Q. So were you their sponsor?

22 A. I was.

23 Q. Do you sponsor anyone else?

24 A. No, just those two.

25 Q. And you've received commissions from

1 either Greg Shepard or Roger Freeborn encouraging
2 you to not put the money into Abraham's trust
3 account?

4 MR. JONES: Objection. Leading.

5 A. I do, which then prompted me, I'm
6 going to open a small business account. Then I can
7 move funds from there to there, yes.

8 Q. Where is that small business again?

9 A. Busey Bank in LeRoy, Illinois.

10 Q. So at this point, all of your
11 business income goes into the Busey bank account?

12 A. That's correct.

13 Q. You mentioned that you produced
14 documents from the RaPower-3 I think you called it
15 back office or member office.

16 A. You can log into your member's area,
17 yeah, rapower3.com, and listed there are your
18 agreements and your invoices.

19 MR. JONES: Just take a moment. That
20 wasn't a question, so if you could phrase...

21 THE WITNESS: Oh, I shouldn't answer.
22 Okay.

23 MR. MORAN: Thank you, Mr. Jones.

24 Q. Do you recall testifying earlier this
25 morning about printing documents from the RaPower-3

1 member area?

2 A. Yes.

3 Q. And where is the RaPower-3 member
4 area?

5 A. Rapower3.com.

6 Q. Okay. And you produced documents
7 from that website, right?

8 A. Yes.

9 Q. Have you ever been instructed to sign
10 or required to sign a nonclosure agreement before
11 accessing that website?

12 A. No.

13 Q. Okay. Have you ever been told that
14 the information on the rapower3.com website is
15 confidential?

16 A. No.

17 Q. Mr. Zeleznik, have you ever visited
18 the solar site or the site at Delta, Utah?

19 A. I have not, no.

20 Q. Let me ask the question I should have
21 asked before that.

22 Where is the operation?

23 A. In Delta, Utah.

24 Q. Okay. And you've never visited it?

25 A. I've not, no.

1 through Exhibit 60 and tell me whether or not you
2 received each of these documents from RaPower-3.

3 A. Wait. I'm sorry. 1960 or --

4 Q. No. I'd like you to look through all
5 of Exhibit 60 which I realize is kind of lengthy, so
6 take a minute.

7 A. Oh, I see. Yes.

8 Q. And tell me whether or not you
9 received each of these documents from RaPower-3.

10 (Pause)

11 A. To the best of my knowledge, yes.

12 Q. So it's your testimony that you
13 received all the documents in Exhibit 60 from
14 RaPower-3?

15 A. To the best of my knowledge, yes.

16 Q. Looking at the first page of
17 Exhibit 60, there's a reference to Frank Lunn,
18 Judith Elens, and Julie Zeleznik-Lohnes.

19 A. Yes.

20 Q. Who is Judith Elens?

21 A. She is someone in my father's down
22 line or that my father sponsored.

23 Q. So your father sponsored Judith
24 Elens?

25 A. Yeah.

1 Q. Okay. Who sponsored or who's Julie
2 Zeleznik-Lohnes?

3 A. That is someone my father sponsored.

4 Q. And what's her relationship to you?

5 A. That's my sister.

6 Q. And then I see several earnings.

7 A. Yes.

8 Q. So were you receiving commissions
9 from their joining RaPower-3?

10 A. Yes.

11 Q. And by their, I mean Judith Elens and
12 Judith Zeleznik-Lohnes.

13 A. Yes.

14 MR. MORAN: Another exhibit. This
15 will be 61.

16 (Plaintiff's Exhibit 61 was
17 marked for identification.)

18 Q. Mr. Zeleznik, you've been handed a
19 copy of what's been marked as Plaintiff's
20 Exhibit 61.

21 A. Okay.

22 Q. Do you recognize Exhibit 61?

23 A. It appears to be an e-mail
24 communication between me and these people.

25 Q. Who are these people?

1 A. Greg Conn, Tom Morse, Jeff Baughman,
2 Carol Zeleznik.

3 This would be my father's e-mail
4 because he didn't use it, and Gary Tipsord.

5 Q. And then about two-thirds of the way
6 down the page, there's an e-mail from you. It says
7 "See the message below."

8 A. Yes.

9 Q. Why are you e-mailing these
10 individuals?

11 A. Because these individuals signed up
12 for RaPower-3.

13 Q. Were you their sponsor?

14 A. No.

15 Q. Why would you be e-mailing someone
16 who isn't your sponsor or who you didn't sponsor?

17 A. Good question. I don't know.

18 (Pause)

19 A. It appears that Roger Freeborn is the
20 sponsor.

21 Q. Mr. Zeleznik, we've discussed your
22 RaPower-3 member area I think is what you called it.

23 A. Correct.

24 Q. Are you familiar with a selection you
25 can make in that area on the RaPower-3 website to

1 view a tree or grid?

2 A. I am, yes.

3 Q. What is that?

4 A. It shows a couple things. It shows
5 what you've purchased, and it shows people that
6 you've sponsored and how many they've purchased and
7 the people they've sponsored and how many they've
8 purchased.

9 Q. Did you provide that information to
10 the United States?

11 A. I can't remember if I printed that
12 off.

13 Q. I reviewed your production, and I
14 don't recall seeing it.

15 A. Okay. Well, there you go.

16 MR. MORAN: Counsel, I'd like to
17 request the witness provide that information to us
18 pursuant to the subpoena which was already issued.

19 MR. HEIDEMAN: We'll place the same
20 objection on the record that we had yesterday that
21 that would be subject to the protective order that's
22 still being decided by the Tenth Circuit Federal
23 Court, Judge Wells, Magistrate Judge Wells, and as
24 such, any production would be inappropriate until
25 that matter has been resolved.

1 next week.

2 MR. JONES: So that would be
3 August 12th.

4 MR. MORAN: August 12th is acceptable
5 to us.

6 (Discussion held off the record.)

7 MR. MORAN: We'll go back on the
8 record.

9 Q. Mr. Zeleznik, are you kept up-to-date
10 when people on your down line make purchases?

11 A. No. I'm notified when I receive a
12 commission check for them purchasing the equipment.

13 Q. Okay. So you don't know until you
14 get a commission check?

15 A. No; well, unless it's updated in that
16 tree or grid. It will be updated there as well, so
17 I'll either find out by checking the grid if they
18 purchased another one or I'll get a commission check
19 in the mail, and I'll go, oh. Then I'll go in and
20 look and see if it's been updated, but sometimes,
21 you know, it's not updated.

22 One or the other happens first.

23 Q. Okay. Do you receive 1099s?

24 A. I do.

25 Q. What do those 1099s represent?