

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

**TEXAS MEDICAL TECHNOLOGY,
INC., and OMRI SHAFRAN,
Plaintiffs**

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**vs.
AMEGY BANK OF TEXAS, A
DIVISION OF ZIONS
BANCORPORATION N.A., and
JOHN P. HERNANDEZ, Individually
Defendants.**

Civil File No. _____

COMPLAINT

COMES NOW, Plaintiffs, Texas Medical Technology, Inc. (“TMT”) and Omri Shafran (“Shafran”), collectively “Plaintiffs”, by and through undersigned counsel, and bring this action against Defendants Amegy Bank of Texas, a Division of Zions Bancorporation, N.A., (“Amegy Bank”), and John P. Hernandez (“Hernandez”), collectively “Defendants”, and as grounds thereof allege as follows:

I. INTRODUCTION

1. TMT is a Texas corporation engaged in the sale and distribution of medical equipment nationally and internationally. Omri Shafran is the CEO and co-founder of TMT. Mr. Shafran studied Law at Bar-Ilan University, economics at Hebrew University, and business at Harvard Business School. The success of TMT is no secret—a simple internet search for Texas Medical Technology, Inc. and/or its CEO Omri Shafran will return numerous local, state and national articles regarding the various ventures, acquisitions, partnerships, and accomplishments of the young corporation and its CEO and Co-Founder Mr. Shafran.

2. This was not lost on Amegy Bank, which spent copious amounts of time and energy courting TMT’s business in the months leading up to September of 2021, when TMT

opened business accounts with the bank. Unfortunately for Mr. Shafran, the success he enjoyed from many years of hard work brought him, amongst other things, anti-Semitic discrimination from Amegy Bank and its Senior Vice President John P. Hernandez.

3. Accordingly, Mr. Shafran commences this action against Defendants to recover damages pursuant to Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. §1981, et seq., as amended, (“Section 1981”), which forbids racial discrimination against any person in the “making, performance, modification and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.”

II. JURISDICTION

4. This Court has jurisdiction over this civil cause of action under 28 U.S.C. § 1331 because it arises under a statute of the United States, specifically Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. §1981, et seq., as amended, (“Section 1981”).

III. VENUE

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391, subsections (b)(2), (c)(2), and (d) because Defendant Amegy Bank is deemed by that statute to reside in any judicial district in which it is subject to the Court’s personal jurisdiction with respect to this civil action, and/or in any district within Texas within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State. Defendant does a considerable and substantial amount of business in this District, employs numerous persons within this District, and regularly solicits business from the citizens of this District.

6. Upon information and belief, individual Defendant John P. Hernandez regularly conducts business within and from this District, serves and seeks to serve the citizens of this

District, maintains residence in this District, and otherwise purposely avails himself of the benefits of this District.

7. In addition, venue in this judicial district is proper because the incident in question occurred in this District and therefore a substantial part of the events or omissions giving rise to the claim occurred here.

IV. PARTIES

8. Plaintiff, Texas Medical Technology, Inc. (“TMT”), is a Texas domestic for-profit corporation.

9. Plaintiff, Omri Shafran, is a citizen of the United States and the State of Texas, over the age of eighteen years of age, and a person with standing to bring a claim under Section 1981. Mr. Shafran is also the Director and Registered Agent of TMT.

10. Defendant Amegy Bank of Texas (“Amegy Bank”) is a wholly owned subsidiary of Defendant Zions Bancorporation, N.A. that maintains a principal place of business in Texas and can be served with process through its Registered Agent for Service, Corporation Service Company d/b/a CSC – Lawyers Incorporating Service Company, at 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218.

11. Defendant John P. Hernandez is the Senior Vice President at Amegy Bank of Texas. He is a citizen of the United States and the State of Texas and may be served at Amegy Bank of Texas, 1717 W Loop S, Houston, Texas 77027, or wherever he may be found.

IV. FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

12. Plaintiffs provide in this section the general substance of certain factual allegations.

13. On September 13, 2021, TMT opened a deposit account at Amegy Bank of Texas (technically, Zions Bancorporation, N.A. dba Amegy Bank). As evidenced by the Zions Bancorporation, N.A. dba Amegy Bank Signature Card (the “Signature Card”), the account title was “Texas Medical Technology Inc.” and the assigned account structure was “Corporation.” *A true and correct copy of the Signature Card is attached hereto as **Exhibit A**.* TMT further received from Amegy Bank a 37-page document titled Zions Bancorporation, N.A. Deposit Account Agreement (the “Account Agreement”). *A true and correct copy of the Account Agreement is attached hereto as **Exhibit B**.*

14. TMT opened business bank accounts at Amegy Bank in September of 2021, following a period of courtship during which Amegy Bank solicited TMT’s business, treating them to various meals and sporting events while pushing their products and customer service. To operate, TMT requires frequent and efficient wire transfers to facilitate contracts for the sale of medical supplies. TMT’s business needs were known to Amegy Bank. After all, TMT was, and remains, engaged in the fast paced, high demand market for COVID-19 testing supplies during the height of the pandemic. Despite its awareness of TMT’s business needs, Amegy Bank repeatedly caused unexplained and unnecessary delays in wire transfers in and out of TMT’s account.

15. On January 18, 2022, Mr. Shafran went to the Amegy Bank branch located at 1717 W Loop S, Houston, Texas. Mr. Shafran preferred to conduct his business in person as opposed to online. While waiting in line that day, he placed his partner, President and Co-Founder of TMT, Dimitri Menin, on speaker phone as he conducted his business. Both Dimitri Menin and Omri Shafran, appearing as signatories on the account Signature Card, are Jewish.

16. During the time Mr. Shafran was waiting in line, John P. Hernandez, Senior Vice President of Amegy Bank, engaged Mr. Shafran, asking him what he was doing at the bank that day. Mr. Shafran knew Mr. Hernandez from previous interactions at Amegy Bank. Mr. Shafran responded that he was going to “have wires out,” to which Mr. Hernandez responded “you the Jewish people control all the money in the world.” Mr. Hernandez’s statement was deeply offensive to Mr. Shafran and Mr. Menin (who heard it over the phone), both of whom are descendants of families murdered in Auschwitz. Mr. Shafran found the statement, the sentiment of which is *deeply rooted* in anti-Semitic discrimination and racial stereotyping, to be disgusting, revolting, disparaging, and humiliating.

17. Soon after, on February 2, 2022, Mr. Shafran received a letter from Mr. Hernandez notifying TMT that Amegy Bank had “elected” to close its accounts effective March 4, 2022. *A true and correct copy of February 2, 2022 letter is attached hereto as Exhibit C.* The letter offered ***no reason or explanation*** for the closure of TMT’s accounts.

18. At the time of the February 2, 2022 letter, TMT was operating at the height of the COVID-19 pandemic, fulfilling orders daily for testing kits around the country. During the period of January 2022 through March 2022, TMT would receive wire transfers for customer purchases and transmit customer payments to vendors all in the same day as a result of a national shortage of testing kits. The fast paced market and sensitive nature of the products TMT was distributing required account stability, something Amegy Bank stripped from TMT at the absolute worst possible time.

19. Following the February 2, 2022 letter from Amegy Bank, TMT acted quickly to open new accounts and avoid losing and/or appearing unstable to its customers. Unfortunately, the turnover period caused foreseeable delays as TMT scrambled to establish new accounts and

update its account information with customers who, in turn, were unable to process quick purchases through TMT. As a result of TMT's inability to receive customer wire transfers, orders were not received or fulfilled, and TMT lost out on anticipated profits from lost sales.

20. In addition to the delays previously caused by Amegy Bank's repeated refusal to process wire transfers to and from TMT's account in a timely manner, Amegy Bank then turned away TMT's business and elected to close TMT's accounts without explanation. Such action, having occurred a mere fifteen (15) days after Mr. Hernandez expressed his frustration and view that people like Mr. Shafran and his business partner Mr. Menin—that is, Jewish people—"control all the money in the world", is an obviously anti-Semitic, discriminatory action on the part of Mr. Hernandez and his employer Amegy Bank.

21. In response to a letter from TMT's counsel inquiring as to Amegy Bank's closure of TMT's accounts and Mr. Hernandez's statement, Amegy Bank took the position that the decision was based on Amegy Bank's inability to "accommodate" the needs of TMT's accounts, despite the fact that Amegy Bank had solicited the TMT accounts a mere five months earlier. This position further affirms Amegy Bank had no good faith reason for its treatment of TMT or Mr. Shafran.

V. CAUSE OF ACTION PURSUANT TO 42 U.S.C. § 1981

22. Plaintiffs Omri Shafran and TMT repeat, reallege, and fully incorporate each and every allegation contained in Paragraphs 1 through 21 of this Complaint as though such allegations were fully set forth herein.

23. In violation of 42 U.S.C. § 1981, Defendants intentionally discriminated against Plaintiffs, on the basis of Plaintiffs' race, the result of which directly impacted and impeded Plaintiffs' contract with Amegy Bank.

24. Plaintiffs have a right under Section 1981 of the Civil Rights Act of 1866, as amended, 42 U.S.C. § 1981, *et seq.*, to be free from discrimination based on race in the “making, performance, modification and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.” *See Saint Francis College v. Al-Khazraji*, 481 U.S. 604 (1987) (acknowledging Jewish persons as protected race under § 1981); *see also Shaare Tefila Congregation v. Cobb*, 481 U.S. 615 (1987) (acknowledging Jewish persons as protected race under § 1982). This right extends to the relationship Plaintiffs had with Amegy Bank through the TMT deposit accounts pursuant to the Signature Card and Account Agreement.

25. Defendants Amegy Bank and Senior Vice President of Amegy Bank John P. Hernandez acted solely out of racial animus in closing TMT’s accounts. Mr. Hernandez’s anti-Semitic comment and Amegy Bank’s immediate notice of intent to close TMT’s accounts violated both Mr. Shafran’s and TMT’s federally protected rights and amounted to utterly unacceptable discriminatory treatment.

26. As a bank, licensed and regulated by the same government that guarantees the equal treatment of all persons under the law, it is *especially unacceptable* for Amegy Bank to deny Plaintiffs the privileges enjoyed by other citizens on the basis of race and an act truly shocking and intolerable in a civilized society.

27. Defendants are jointly and severally liable to Plaintiffs for compensatory damages under 42 U.S.C. § 1981. As a result of Defendants’ actions, Plaintiffs sustained and endured severe emotional distress, mental anguish, disgust, revulsion, embarrassment, disparagement, shock and humiliation, in an amount of at least \$500,000 or as to be determined by the trier of fact. Further, Defendants’ mishandling of and election to close Plaintiffs’ accounts in violation of

§ 1981 caused actual, foreseeable damages in the form of lost profits and interruption of customer contracts to TMT in an amount of at least \$1,750,000 or as to be determined by the trier of fact.

28. Defendants acted with malice and/or reckless indifference towards Plaintiffs' federally protected rights via both Mr. Hernandez's comment and their subsequent actions—driven only by Plaintiffs' racial classification. Mr. Hernandez's comment shocked and disparaged Mr. Shafran, and Defendants' subsequent decision to close TMT's accounts in order to deprive Mr. Shafran and TMT of their contractual rights because of race was based on malice and/or indifference to Plaintiffs' legal rights. Accordingly, the Defendants are also liable to Plaintiff, jointly and severally, for punitive damages under 42 U.S.C. § 1981 in an amount to be determined by the trier of fact.

29. In addition, the Defendants' conduct as described hereinabove has caused Plaintiffs to incur attorneys' fees and costs and will continue to cause Plaintiffs to incur such fees and costs until this action has been resolved, and Plaintiffs are entitled to recover those attorneys' fees and costs in accordance with applicable federal laws.

VII. JURY DEMAND

30. Plaintiffs respectfully request trial by jury on this matter.

VII. PRAYER

WHEREFORE, Plaintiffs demand judgment against Defendants Amegy Bank and John P. Hernandez, jointly and severally, for compensatory and punitive damages in an amount to be determined by the jury at trial, and for attorneys' fees, costs, pre-judgment interest and such other and further relief as the Court shall deem just and proper.

Respectfully submitted,

GREER, HERZ & ADAMS, L.L.P.

By: /s/Andrew Mytelka

Andrew Mytelka

Fed. ID No. 11084

State Bar No. 14767700

amytelka@greerherz.com

One Moody Plaza, 18th Floor

Galveston, Texas 77550

(409) 797-3200 (Telephone)

(866) 422-3855 (Facsimile)

Chelsi Honeycutt

Fed. ID No. 3311304

State Bar No. 24073478

choneycutt@greerherz.com

2525 South Shore Blvd., Ste. 203

League City, Texas 77573

(409) 797-3200 (Telephone)

(866) 422-4406 (Facsimile)

ATTORNEYS FOR PLAINTIFFS