

Rosenfarb LLC

It's All About Money©

Announcing Rosenfarb LLC!

FIRM NEWS

•**Roman Z. Matatov, CPA, CFF, CVA, CFE, Cr.FA.** a Rosenfarb Expert, joined Baruch's Executives on Campus program.

•**Roman Z. Matatov, CPA, CFF, CVA, CFE, Cr.FA.** was appointed to the International Operations and Historical Records Committees of the Board of Directors of the Hebrew Immigrant Aid Society ("HIAS").

EVENTS

•**The New York Chapter of the Association of Certified Fraud Examiners**, together with **Long Island University**, presents its semi-annual fraud-fighting seminar on October 28, 2011. Roman Z. Matatov, CPA, CFF, CVA, CFE, Cr.FA, a Rosenfarb Expert, is a Past President of the Chapter.

•**The Federal Reserve Bank of New York** and the **Manhattan/Bronx Chapter of the NYS Society of CPAs** will present "Economic Outlook" on October 6, 2011 at Deutsche Bank's Wall Street offices. Roman Z. Matatov, CPA, CFF, CVA, CFE, Cr.FA, a Rosenfarb Expert, is a Past President of the Chapter.

Rosenfarb LLC is a firm of leading forensic accounting, valuation and economic professionals that offers financial expertise in litigation, valuation, and investigation to the legal, business, and not-for-profit communities.

Selecting an expert can be fraught with challenges. Experts that are experienced with the litigation process are an asset to the litigator – they create solutions, rather than problems. Experienced experts are sensitive to meeting deadlines. Experts that are aware of the priorities of the judicial system avoid complexity and confusion. To conform to these attributes, Rosenfarb developed and consistently employs a unique solution – The Rosenfarb ResolveSM.

First, Rosenfarb's professionals exhibit analytic agility and rigorous rationale to generate compelling conclusions. Our experts add

value that results in successful assignments, which earns the continued trust of our esteemed clients and colleagues.

Second, our unparalleled responsiveness and our unique ability and desire to compel by condensing and clarifying complexity, are the "wow" factor our clients have come to recognize.

Third, enabling our clients' success is our experience and expertise gained via the successful completion of hundreds of assignments in all major and many niche industries – ranging from the highly-sophisticated and very complicated to the less exotic matters.

Fourth, our work is always communicated clearly and concisely. This is achieved by removing undefined jargon, minimizing repetition, avoiding tortured text and writing dynamically.



Inside this issue:

Announcing Rosenfarb LLC!	1
Discerning Diversion on a Budget	1
Need Old Tax Returns?	2
Lost Profits and the Cost Conundrum	2
Sound Sales Forecasts	3
"Yardstick" Mismeasurement	3
Sam's Story	4

Discerning Diversion on a Budget

Discerning asset diversion could require a significant investment by the client. There are, however, a number of options for even the fee-sensitive client, for whom the value of an expert's investigation is limited by the modesty of the suspected theft.

Keen mining of financial data in accounting software such as QuickBooks should quickly yield system reports of "red flag" transactions—such as personal or dis-

guised payments to suspected wrongdoers. Together with cancelled checks or credit card statements, such "red flags" could create compelling evidence.

If broad analyses are not feasible, non-business expenses could be discerned by comparing the subject business to an "average" business using readily available industry guidelines and trends. Unexplained significant differences could further support

the case for diversion.

For the financially savvy client, the expert could attempt to adopt any financial analysis already performed, and could add value by arranging the elements and results of the analysis consistent with the needs of the litigator or the trier of fact.

Whatever the challenge, adding value is simple with the right tools, training, and tenacity. Contact us to learn more.



Need Old Tax Returns?

In family law matters, obtaining tax returns are of great importance. Generally, copies are procured from either: 1) the IRS and/or State(s), 2) a paid preparer, or 3) the spouse that prepared the return.

Most people ask the IRS for information only as a last resort because they incorrectly assume it is a cumbersome process. In fact, it can be rather simple and quick, with no cost.

The IRS can provide “tax return transcripts” for free within two weeks. A tax return transcript shows most line items from a tax return (Form 1040, 1040A or 1040EZ) as it was originally filed, including any accompanying forms and schedules. It does not reflect any changes made after the return was filed.

There are two easy and convenient options for getting copies of your federal tax return information - by phone or by mail. Request for transcripts can be made by calling 1-800-829-1040.

To order by mail, taxpayers need to complete IRS Form 4506T (Request for Transcript of Tax Return). Note that only one spouse needs to make the request – by phone or mail – therefore this can be done unilaterally.

The IRS can also provide copies of tax returns for a \$57 per return fee. This takes up to 60 days. So, barring some specific need, transcripts are a cheaper and faster way to obtain tax information.

In conclusion, while it is helpful to receive copies of tax returns from paid preparers or the spouse that prepared the return, obtaining tax return transcripts from the IRS is simple and easy. As a result, when consulting with a potential or new client that indicates they do not have copies of their tax returns, have them complete Form 4506-T or call 1-800-829-1040 so that you can obtain the information without making a discovery request from your adversary.

For more information, please contact Noah B. Rosenfarb, one of the firm’s Experts, frequent speaker and proud sponsor of Divorce Education Center of NJ (www.DECNJ.org), a non-profit organization that educates divorcing women.

“The IRS can provide ‘tax return transcripts’ for free within two weeks.”



Lost Profits and the Cost Conundrum

When determining lost profits it is critical to determine those costs which may reasonably be traced directly to the lost revenues—those typically referred to as incremental costs. Otherwise, excessive costs will yield understated lost profits, and incompletely recognized costs will overstate lost profits.

Direct costs—such as materials and labor—should be clearly defined and traceable, but the analysis may be challenged due

to inappropriate cost categorization, i.e. non-direct costs categorized as direct.

An analysis of variable costs and overhead expenses—such as rent and overhead expenses—could suffer from improper attribution. Overhead expenses could be considered incremental if they are reasonably and uniquely attributable to lost revenues. All overhead expenses could be considered attributable if the expert’s assignment is

calculating lost profits resulting from the loss of an entire business. Some overhead expenses could be considered attributable if the expert’s assignment relates to the loss of a portion of a business. However, a determination of attribution must be based on sound methodology by which the expert traces the expenses or some portion of the expenses directly to the finished goods or services.

Sound Sales Forecasts

Financial forecasts are often used in connection with disputes. Constructing financial forecasts requires reasonable, supportable, and consistent assumptions. A starting point in constructing a financial forecast is the sales forecast. A sales forecast is often critical when assessing other parts of a financial forecast—including variable and fixed costs. Further, understanding what constitutes a sound sales forecast can quickly reveal forecast failures.

Sales forecast considerations consist of the following:

- Expected product or service mix;
- Expected sales volume; and
- Expected sales rate.

The expert should consider whether the product or service mix is feasible, likely to fluctuate, or is sensitive to market forces. The forecasted sales volume should reflect the marketing, manufacturing, or staff capacities of the business. Sales rates used in the forecast should take into account historical rates charged by the business, a reasonable basis for expected changes, and, if available, rates

charged by industry peers.

The overall trend yielded by the sales forecast should consider expected economic and industry changes. For example, a mature industry may be experiencing stagnation, while a new industry explosive growth. Similarly, a niche industry whose products or services are high in demand may justify relatively high prices. Further, the economies of multiple countries could effect the forecast if the subject business has a global presence.



“Yardstick” Mismeasurement

The failure to reasonably apply the “yardstick” approach when measuring damages could result in exclusion of the expert’s testimony.

Appropriate use of the yardstick approach introduces financial statistics about a sufficient number of businesses comparable to a subject business, in absence of financial information about that subject business adequate to demonstrate lost profits or other measures of damages. This approach generally applies to new businesses, products, or services with a limited or non-existing operating history—where the past results of the subject business are either not available or are not reasonably indicative of the expected future performance and profits in question for purposes of the damages analysis.

These “comparable” statistics are then used to forecast the financial condition of the subject business “but for” the alleged wrongdoing, and determine whether the “but for” results differ from actual results—i.e. whether there are damages.

Typical failures in appropriately measuring damages using the yardstick approach include using an:

- Insufficient number of comparable businesses;
- Inadequate comparability of chosen “comparables”; and
- Otherwise unreliable analyses.

An example of insufficiency was highlighted in *Victory Records, Inc. v. Virgin Records America, Inc.* where the plaintiffs’ expert proposed to testify about the sufficiency of using one music band as the “yardstick” for the profits of the subject music band. The district court excluded the expert’s testimony and noted in its analysis the absence of the expert’s “attempt to establish that a sample size of one band is an appropriate ‘yardstick.’”

An example of inadequate comparability was highlighted in *Devon Medical, Inc. v. Ryumed Medical Inc.* where the defendant’s expert compared the defendant’s business with another business. The resulting lost profits claim was ruled to be speculative by the Florida District Court of Appeals and noted to not have proven how that other business “resembled Ryumed in size, location, profits, and position.”

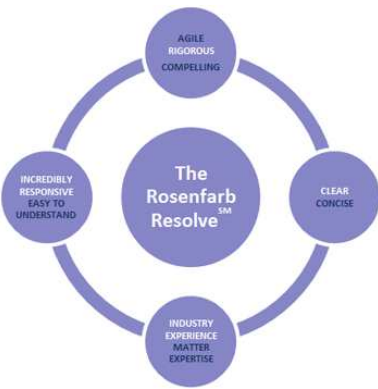
An example of unreliability

was highlighted in *R&R International, Inc. v. Manzen, LLC* where the plaintiff’s expert proffered to opine that plaintiff suffered approximately \$8 million in lost profits using the “yardstick” test. The resulting lost profits report was stricken by the Florida District Court. The expert selected “sample” businesses “solely on the limited universe of his personal contacts without any reference to R&R or the general characteristics of R&R in order to determine accurately R&R’s potential market share.” Further, this deficiency of “sampling” methodology “did nothing to consider the comparability of the “sample” distributors to R&R.” Also, the court cited that “other calculations and assumptions used by [the expert] are equally troubling.” The court cites an “apples-to-oranges” comparisons of valuation multiples derived from branded beverage manufacturers—not distributors like the plaintiff; unexplained reduction of such multiples by a “discount”; and untested and unverified research information from the internet website Wikipedia.

Finally, when applying any approach when calculating dam-

“The failure to reasonably apply the “yardstick” approach when measuring damages could result in exclusion of the expert’s testimony.”

ages, the expert must typically consider whether reasonable alternatives to the wrongdoing may have caused some of the alleged loss. In *Victory*, for example, the court notes that “causation is part and parcel of [expert’s] opinion” and that the expert “cannot testify with...reliability” as he “was unaware” of, as the court cites, “obvious alternative explanations” for the plaintiff’s “disappointing performance.”



New York Office
825 Third Avenue
New York, NY 10022



New Jersey Office
101 Eisenhower Parkway
Roseland, NJ 07068



Phone: 855-415-1100
E-mail: info@rosenfarb.com
Web: www.rosenfarb.com

ROSENFARB
Forensic Accounting and Valuation Experts

Sam's Story

Sam was born to Holocaust survivors on February 10, 1949 in a displaced persons camp in Germany. Sam and his family found their way to Brooklyn, New York where Sam was raised. Before enrolling in Queens College of the City University of New York at the age of 16, Sam was on the debate team and worked at his father's grocery in Brooklyn. Later, Sam became a United States Marine – proudly serving his country.

On his 24th birthday, after a few years working with Donald E. Talbot, one of his accounting professors, Sam set up his own accounting practice. About a year later the practice merged into a small CPA firm in Maplewood, New Jersey. The firm continued to blossom and prosper and in 1990 Sam created the

Rosenfarb LLC is a firm of leading forensic accounting, valuation and economic professionals that offers financial expertise in litigation, valuation, and investigation to the legal, business, and not-for-profit communities.

Rosenfarb experts apply generally accepted damage theories, valuation standards, accounting principles, and audit standards in assisting counsel in connection with contemplated or on-going matters. At their disposal is the latest software and technology – but it is often simply a blank spreadsheet or word processing document which acts as the canvas for their work. Rosenfarb experts exercise sound business judgment when evaluating financial issues. Further, when developing work product, they think logically, think ahead, and proactively “play devil’s advocate” to anticipate and address challenges before the parties adverse to their clients do. Achieving value begins with understanding the facts and the litigants and is followed by working with counsel to assess whether a particular position is financially feasible and reasonable. The “story” is then conveyed to the trier of fact through a self-contained, fully supported report.

The Rosenfarb Process has been designed to extend and enhance to counsel what they offer their clients – professionalism and excellence. Whether retained on time, or in an emergency, we will work expeditiously and self-sufficiently without sacrificing work product quality. The Rosenfarb Process has also been designed to eliminate complexity and extract from data the substance of the financial elements of a dispute. We will discuss with you and your client – in layman’s terms – the essence of the financial facts pertinent to a matter. We will summarize the often voluminous spreadsheets required to calculate lost profits, value, or a divorcing couple’s lifestyle. We will decipher the economic reality underlying a financial transaction’s often cumbersome legal form.

Retaining Rosenfarb means gaining instant access to experience in virtually any major or niche industry – an attribute pervasive in each Rosenfarb Product. Each Rosenfarb Product is crafted to reflect deep expertise in a myriad of dispute and non-dispute related matters. From lost profits, to fairness opinions, Rosenfarb offers Products to suit each matter’s unique demands. For more information call, e-mail, or visit us on the web. Rosenfarb’s unique style adopts the principles and techniques of clear and concise writing and analysis – including removing undefined jargon, minimizing repetition, avoiding tortured text and writing dynamically.

forensic accounting firm of Rosenfarb & Co, which merged again in 1999 to form RosenfarbWinters, LLC. RosenfarbWinters, LLC became the preeminent forensic accounting practice in the State of New Jersey. In 2008, having grown to a firm of 14 partners with 75 team members, RosenfarbWinters merged with a top 20 CPA firm and Sam became the Partner-In-Charge of Litigation, Investigation, and Valuation services.

During late 2011 Sam left the large firm environment to return once again to a forensic accounting practice. Rosenfarb LLC was formed to embody Sam’s commitment to value and to celebrate the litany of skills, insights, abilities, knowledge, and business acumen of the firm’s many team members.

Throughout more than 40 years of business and accounting experience, and being involved in more than 1,000 cases, Sam’s commitment to providing clients with significant value has never wavered. Value is only possible if smart, dedicated professionals consistently employ an effective process to generate outstanding work product. This is the mantra of Rosenfarb LLC. We are committed to provide value to our clients. Value matters – to us and to our clients.

Sam’s Story continues as our firm’s story begins.

Appreciatively,
Your Expert Team at Rosenfarb LLC

